

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 6526 OF 2025.

IN/WITH

FIRST APPEAL (ST) NO. 23223 OF 2024.

Akashdeep Agarwal, Director Proprietor
Ashtvinayak Hospital And Anr.

...Applicants/
(Org. Appellants)

Versus

Smt. Tarabai Sampat Waghmare And Ors.

...Respondents.

*Adv. Pratap Sampat and Adv. Bharti S. i/by Adv. Aarti Suvarna for the
Applicants.*
Ms. kavita Ancham for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : March 27, 2025.

P. C. :

1. The present Interim Application has been preferred by the
Original Appellant seeking the following prayer:

*"In the facts, circumstances and law stated
hereinabove, the Hon'ble,. Court may kindly condone
the delay and admit the appeal for hearing following
the disposal of the Writ Petition only as an alternate
remedy for deciding the fraudulent claim."*

2. Though the Interim Application is not properly drafted and

the prayers are incomprehensive, during the submissions the case which was put up by the learned Counsel for the Applicant and which has been so understood by this Court as well as learned Counsel for the Respondent is that the Applicant is seeking waiver of the deposit of the amount as contemplated by third proviso to sub Section 1 of Section 30 of Employees Compensation Act, 1923 ("**EC Act**").

3. In support of the Application the contention raised by learned Counsel for the Applicant is that the entire claim of the Original Claimant is fraudulent and not acceptable under law and the fraud will not create any rights and therefore the question of deposit will not arise. He would however tender certificate issued by the Commissioner for Employees' Compensation under Section 30(1) of the EC Act evidencing the deposit of sum of Rs. 4,48,000/- in respect of the order dated 29th November, 2018 passed in Application (WCA-185/B-46/2016). He would therefore submit that he has deposited 50% of the compensation amount and the balance amount of compensation should be waived. In support he relies upon the decision of the Apex Court in the case of **EMM Tex Synthetics vs. Om Prakash**¹ and the decision of the High Court of Jammu & Kashmir & Ladakh in the case of **Divisional Manager, JKSFCL Bhaderwah vs. Mohammad Sharief**². Based on this Judgments he would contend that what is contemplated

1 (2008) 14 SCC 765

2 2022 Live Law (JKL) 209

under the third proviso to sub Section 1 of Section 30 of the EC Act is the deposit of the compensation and not penalty and interest. He would further submit that as 50% of amount has already been deposited, the Appeal be admitted.

4. *Per contra*, learned Counsel appearing for the Respondent would point out that the Appeal challenges the order dated 29th November, 2018 passed by the Commissioner for Employees' Compensation in which the Opponent Nos. 1 and 2, who are present Applicants, were jointly and severely directed to pay compensation of Rs. 8,96,000/- along with interest @ 12% and also to pay sum equivalent to 50% compensation amount by way of penalty to the Applicants. She submits that the third proviso to sub Section 1 of Section 30 of the EC Act is clear and specific and the Applicant, before he files an Appeal before this Court, is liable to deposit the entire amount of compensation i.e. Rs. 8,96,000/- and there is no provision for waiver of the said amount. She submits that the Applicant be directed to balance amount of Rs. 8,96,000/- before the Appeal be taken up for hearing.

5. I have considered submissions and perused the record.

6. The third proviso to sub Section 1 of Section 30 of EC Act which governs the filing of Appeal before the High Court provides that no Appeal by an employer under Clause (a) shall lie unless the

memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the Appellant has deposited with him the amount payable under order Appeal against. The third proviso quoted above makes it clear that where an Appeal has been filed by the employer under Clause (a) of sub Section 1 of Section 30 of the EC Act the requirement of the deposit of the entire amount is mandated. Clause (a) of sub Section 1 of Section 30 of the EC Act provides for an Appeal against order awarding as compensation a lumpsum whether by way of redemption of half monthly payment or otherwise or disallowing a claim in full or part for a lumpsum. Though by an amendment of the year 1959 Clause (aa) came to be introduced in the said provision providing for an Appeal against order awarding interest or penalty under Section 4-A, the third proviso was not amended to incorporate Clause (aa) and therefore the third proviso is confined only to Clause (a) which is challenge to the Award of compensation.

7. I am thus in agreement with the view of the Jammu & Kashmir High Court in ***Divisional Manager, JKSFCL Bhaderwah vs. Mohammad Sharief*** (supra). As in the present case the compensation which was awarded was Rs. 8,96,000/- and he has deposited an amount of Rs. 4,48,000/- the Applicant is directed to deposit the balance amount of Rs. 4,48,000/- before the Commissioner within a period of four weeks from today. The Interim Application is disposed of in the

above terms.

8. List the above First Appeal on **8th May, 2025**.

[Sharmila U. Deshmukh, J.]