

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 57 OF 2024
(FOR WITHDRAWAL OF AMOUNT)
IN
COMMERCIAL FIRST APPEAL NO. 7 OF 2022

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1] Kaulgud Construction Pvt. Ltd.
& 2 Ors. .. Applicants

In the matter between :

Maharashtra State Road Development Corporation .. Appellant

Versus

1] Kaulgud Construction Pvt. Ltd.
& 2 Ors. ... Respondents

Mr.M.L. Patil, Advocate for Applicants /Respondents.

Dr.Veerendra Tulzapurkar, Senior Advocate with Mr.Prashant Chawan, Reshmaiani Nathani, Keshav Tripathi, J. Kapadia i/b Little & Co., Advocate for Appellant-MSRDC.

**CORAM : B.P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : FEBRUARY 29, 2024.

P C:

1. The above Interim Application is filed by the Applicants (Original Plaintiffs) to release the amount of Rs.35,32,74,343/- deposited by the

Appellant in this Court on such terms and conditions as this Court may deem fit.

2. Initially, the Trial Court passed a decree in favour of the Original Plaintiffs in the sum of Rs.22,99,07,739/- along with interest @ 12.20% per annum [after deduction of income tax] from the date of institution of the Suit till the judgment and thereafter @ 7% per annum till payment and/or realization. This decree of the Trial Court is challenged in the above Appeal by the Appellant-Maharashtra State Road Development Corporation (“MSRDC”). It is pursuant to the orders passed by this Court on 24th August 2022, 5th September 2022, 14th September 2022 and 18th October 2023, respectively, that the amount of Rs.35,32,74,343/- has been deposited by MSRDC in this Court and which the Applicants (Original Plaintiffs) seek to withdraw.

3. We enquired from the learned counsel appearing on behalf of the Applicants that if he is permitted to withdraw the amount of Rs.35,32,74,343/-, will he be in a position to furnish a bank guarantee for the said amount, or furnish any other adequate security to ensure that the money can be brought back, in the event the Appeal succeeds. The learned counsel appearing on behalf of the Applicants fairly stated that the Applicants are not in a position to either furnish a bank guarantee or

furnish any security. What they can furnish is only an undertaking that they will bring back the money if the Appeal succeeds.

4. Considering the statement made by the learned counsel appearing on behalf of the Applicants, we are of the view that we cannot permit the Applicants to withdraw the amount Rs.35,32,74,343/- merely on an undertaking that in the event the Appeal succeeds, the Applicants would bring back this amount. In these circumstances, the above Interim Application is dismissed. However, there shall be no order as to costs.

5. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[**SOMASEKHAR SUNDARESAN, J.**]

[**B.P. COLABAWALLA, J.**]