

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 4047 OF 2014
IN
CIVIL APPLICATION NO.1799 OF 2014
IN
FA/2350/2009**

MUKTABAI SOPAN KAILE
VERSUS
RAMCHANDRA SOPAN KAILE AND OTHERS

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Advocate for Respondent 1 : Mr. V D Gunale
Advocate for Respondent 2 : Mr. D.S.Khaire h/f Mr. S.S.
Dande
AGP for Respondent 3: Mr. S.G.Karlekar

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**CORAM : S.S. SHINDE & V.K. JADHAV, JJ.
Dated: February 13, 2015**

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ORDER :- (Per V.K.Jadhav, J.)

1. The applicant has instituted a Special Civil Suit No. 1/2012 for the relief of partition and separate possession and the same is pending in the Court of Civil Judge (Senior Division), Latur. In the said suit, present non-applicant No. 1 as well as others are defendants. In the said suit, the applicant has filed an application for temporary injunction under Order 39 Rule 1, 2 of Civil Procedure Code restraining the defendants from alienating the suit property and also from withdrawing the compensation deposited in Special Darkhast No. 346 of 2008 arising out of the judgment and award passed by the Reference Court under Section 18 of the

Land Acquisition Act, 1984. It is not out of place to mention here that, the above said Special Darkhast pertains to the compensation awarded and withdrawn by the non-applicant No.1 herein. The learned Civil Judge (Senior Division), Latur, by order dated 03.02.2012, restrained the defendant No. 1 in the suit (Non applicant No.1 herein) from withdrawing the compensation in the aforesaid Special Darkhast. The applicant prays that, the order dated 28.4.2014 passed by this Court in Civil application No.1799 of 2014 be recalled and the Civil Application be heard on merits alongwith Civil Application No.1800/2014.

2. The learned counsel for the non-applicant submits that, the present applicant was not party in the Land Acquisition Reference and also in the appeal filed by the State and acquiring body against the enhanced compensation. The non-applicant No.1 has withdrawn the substantial amount of compensation by order of this Court and at that time there was no order passed by the learned Civil Judge Senior Division in the aforesaid suit. The learned counsel further submits that, the non applicant No.1 has filed an application for withdrawal of the remaining amount alongwith the bank Guarantee as per the order passed by the Hon'ble Apex Court.

3. It appears that, the Civil Suit is pending between the parties and an ex-parte interim order was also passed by the Civil Court. Though the appeal is preferred by the non-applicant no.1, against the said ex-parte interim order, still then, at the time of passing of order dated 28.4.2014, the said interim order was inforce. This court has permitted the non-applicant no.1 to withdraw the remaining amount of compensation as per the order dated 8.11.2011 passed by the Hon'ble Apex Court. On the backdrop of this, so far as the withdrawal of the remaining amount of compensation alongwith the bank guarantee is concerned, we deem it appropriate to hear the applicant in Civil Application No. 1800 of 2014. Hence, following order.

ORDER

1. Civil Application is allowed in terms of prayer clause '**B**'. Civil Application No.1799 of 2014 be restored to its original stage.
2. Civil Application be listed before the appropriate Bench.
3. Civil Application stands disposed of.

(**V.K. JADHAV, J.)**

(**S.S. SHINDE, J.)**

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aaa/-