

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7855 OF 2014

Shri Mahadev Tukaram Nagane ..Petitioners.
and Ors

Vs

The State of Maharashtra and .. Respondents
Ors.

Mr. Ashok B. Tajane , Advocate for Petitioners.
Mr.Sanjay Babar, A.G.P for Respondents no. 1 and 2.
Mr. Vijay D. Patil, Advocate for Respondent no.3.

CORAM : R.G.KETKAR,J.
DATE : 20/12/2016

PC:

1. Heard Mr.Ashok Tajane, learned counsel for the petitioners, Mr. Sanjay Babar, learned A.G.P for respondents no.1 and 2 and and Mr.Vijay Patil, learned counsel for respondent no.3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'decree holders, have challenged the Judgment and order dated 21.2.2014 passed by the learned Civil Judge, Senior Division, Pandharpur below Exhibit-19 in Regular Darkhast No. 14 of 2013. By that order, the learned trial Judge partly allowed application Exhibit-19 filed by the Judgment debtor no.3 for dismissing the Darkhast on the ground of maintainability and obtaining compensatory costs of Rs.5000/- from the decree holders.

3. In support of this petition, Mr. Tajane submitted that the

land of decree holders admeasuring 75 R out of Gat no. 66 and 35 R out of Gat No. 67/1/2 was acquired by the State Government for the purpose of Ujjani Right Bank Canal Distributory No.24A. The award was made on 29.3.2001. The decree holders filed application under section 18 of the Land Acquisition Act, 1894 (for short, 'Act') claiming enhanced compensation of Rs. 4,48,449/-. The matter was referred to Lok Adalat and on 6.3.2012 the dispute was settled in terms of the Award which is to the following effect.

“AWARD

The Dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter. The following award is passed in terms of the settlement:

The Opponents and State of Maharashtra do pay Rs.2,25,250/- (In words Rs. Two Lakh Twenty Five Thousand Two Hundred and Fifty only) as enhanced compensation amount on or before completion of six months from the date of Award.

The opponents do also pay interest at the rate of 15% p.a on enhanced amount from the date of Award till realization of entire compensation in case of default in payment of compensation within six months as per notification.

The applicant is entitled to get refund of Court Fee Stamp as per rules.

No order as to costs.”

4. The decree holders filed Regular Darkhast No.18 of 2012 on 3.10.2012 for recovery of Rs. 4,06,640/- as more particularly set out in column 10 of that Darkhast. It is the case of the judgment debtor no.3 that as per the Award made on 6.3.2012, they have

paid Rs. 2,30,882 on 31.10.2012. Pending the Darkhast, decree holders filed purshis on 20.2.2013 inter alia setting out therein that compromise talks are going on between the parties out of court and there is possibility of settlement. In view thereof, the decree holders do not desire to proceed with the Darkhast. In view of the purshis Exhibit-16 filed by the decree holders, the learned trial Judge, by order dated 5.3.2013, disposed of execution proceedings as withdrawn. Thereafter, the decree holders filed Regular Darkhast No. 14 of 2013 on 10.6.2013. Judgment debtor no.3 filed application Exhibit-19 for dismissing the Darkhast by imposing costs of Rs.5000/- on the ground that the same is not maintainable. By the impugned order, the learned trial Judge has dismissed the Darkhast on the ground that it is hit by principles of res judicata. The prayer made by the judgment debtor no.3 for payment of compensatory costs of Rs.5000/- was turned down. It is against this order, the decree holders have instituted the present petition.

5. In support of this Petition, Mr. Tajane reiterated the submissions that were advanced before the lower Court. In particular, he submitted that in terms of the order dated 6.3.2012 before the Lok Adalat, the Award was made. The Judgment debtors were directed to pay Rs.2,25,250/- as enhanced compensation together with interest at the rate of 15% p.a. on enhanced amount from the date of Award, i.e. 29.3.2001. The

Judgment debtors have deposited Rs.2,30,882/- on 31.10.2012. The Judgment debtors have not paid interest at the rate of 15% per annum on Rs. 2,25,250/- from 29.3.2001 till 31.10.2012. The learned trial Judge was, therefore, not justified in passing the impugned order. That apart, he submitted that the learned trial Judge committed serious error in holding that the present Darkhast is hit by principles of res judicata as the earlier Darkhast was withdrawn and was not decided on merits.

6. On the other hand, Mr. Patil supported the impugned order. He submitted that the contention of the decree holders that the judgment debtors are liable to pay interest at the rate of 15% per annum on the enhanced amount of Rs.2,25,250/- from the date of Award, namely, 29.3.2001, is wholly misconceived. He submitted that the Award was made by Lok Adalat directing the Judgment debtors to pay Rs.2,25,250/- within six months failing which the judgment debtors were liable to pay interest at the rate of 15% per annum on the enhanced amount. In other words, it is only in case of default committed by the judgment debtors in paying enhanced amount of compensation within six months from 6.3.2012, interest at the rate of Rs. 15,000/- was required to be paid on the enhanced amount of compensation. Enhanced amount of compensation was to be paid on or before 5.9.2012. As the amount is paid on 31.10.2012, by calculating the interest over Rs. 2,25,250/- judgment debtors have deposited amount of

Rs. 2,30,882/-. He, therefore, submitted that basically Darkhast filed in the year 2013 itself is not maintainable having withdrawn the earlier Darkhst on 5.3.2013.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the matter was referred to Lok Adalat and on 6.3.2012, the matter was settled before the Lok Adalat. I have already extracted the Award made by Lok Adalat. Perusal of the Award and in particular paragraph 2 thereof, shows that the judgment debtors were directed to pay Rs. 2,25,250/- as enhanced amount of compensation on or before completion of six months from the date of the Award. This obviously refers to 6.3.2012, being the date of the Award made by Lok Adalat. If the amount was paid within six months from 6.3.2012, the judgment debtors were not required to pay any interest amount. Third paragraph shows that the judgment debtors were liable to pay interest at the rate of 15% p.a. on the enhanced amount from the date of the Award, i.e. 6.3.2012 till realization of the entire compensation **in case of default in payment of compensation within six months as per notification**. In other words, the interest at the rate of 15% was payable in the event of judgment debtors not paying the enhanced compensation within six months from 6.3.2012. It is not in dispute that on 31.10.2012 the judgment debtors have

deposited Rs. 2,30,882/-. The decree holders have also accepted that amount. In fact, as noted earlier, the decree holders filed prushis Exhibit-16 on 20.2.2013 for withdrawal of Darkhast. Accordingly, by order dated 5.3.2013, the learned trial Judge disposed of the Darkhast. It is only thereafter the decree holders have instituted present Darkhast on 10.6.2013. The said Darkhast is obviously not maintainable and the learned trial Judge was, therefore justified in dismissing the Darkhast on the ground of maintainability.

8. The decree holders were not in a position to substantiate their claim of Rs. 6,14,470/- which includes interest component of Rs. 3,88,837/- from 29.3.2001 to 3.10.2012.

9. Mr. Tajane submitted that the learned trial Judge was not justified in holding that the present Darkhast is hit by principles of res judicata as the earlier Darkhast was not decided on merits. It is no doubt true that the earlier darkhast was not decided on merits and in view of the prushis Exh.16 filed by the decree holders, the Darkhast was disposed of as withdrawn. But the moot question is whether the decree holders were justified in filing the fresh Darkhast firstly after having accepted the amount deposited by the judgment debtors on 31.10.2012 and secondly after withdrawing the earlier Darkhast. Answer to this issue is emphatically in negative. The decree holders were not justified at all in filing fresh Darkhast.

10. In view thereof, the learned trial Judge rightly passed the impugned order by holding that the Darkhast is not maintainable. Hence, petition fails and the same is dismissed.

(R.G.KETKAR, J.)