

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL APPLICATION (CAF) NO.568 OF 2014

IN

FIRST APPEAL NO.653 OF 2013

(Vidarbha Irrigation Development Corporation ..vs.. Gajanan Shriram Solanke and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Vinay Dahat, Advocate for the appellant,
Shri N.B. Kalwaghe, Advocate for the respondent No.1,
Shri M.A. Kadu, AGP for the respondent Nos.2 and 3.

CORAM : Z.A. HAQ, J.

DATED : 20-08-2016

The reference Court passed an award on 24-04-2006 and to execute this award the respondent No.1 had filed execution proceedings for recovery of amount of Rs.15,19,739/-. The Special Land Acquisition Officer deposited the amount of Rs.15,19,739/- which was withdrawn by the respondent No.1.

The present appellant was not party to the proceedings. According to the present appellant, it being the acquiring body, it should have been impleaded in the proceedings. The appellant had filed First Appeal No.1081/2008 challenging the award passed on 24-04-2006. This Court allowed the appeal by the judgment dated 03-03-2011 and remanded the matter to the reference Court directing that the present appellant be impleaded as party.

After remand, the reference Court passed award on 30-03-2012. According to the appellant, the amount of compensation as per the award dated 30-03-2012 is Rs.12,34,408/-. The appellant has challenged the award passed on 30-03-2012 in this appeal. While admitting the appeal, this Court has directed the appellant to deposit 75% of the amount which according to the appellant comes to Rs.9,25,806/-.

According to the appellant, as it has earlier deposited Rs.15,19,739/- which is withdrawn by the respondent No.1-claimant, deducting Rs.9,25,806/- (75% of the amount), the appellant is entitled to recover Rs.5,93,933/- from the respondent No.1. This application is filed by the appellant praying that the respondent No.1 be directed to refund the amount of Rs.5,93,933/-.

The application is pending before this Court since 06-03-2014. Shri N.B. Kalwaghe, Advocate for the respondent No.1 sought time, however, as the application is pending for more than 27 months, the request for adjournment is rejected.

The learned Advocate for the respondent No.1 has submitted that the prayer made in this application may be considered at the time of hearing of the appeal. Alternatively, it is submitted that as per the award

challenged in this appeal, the respondent No.1-claimant is entitled for Rs.12,34,408/- and if the respondent No.1 is permitted to retain this amount, the respondent No.1 will be required to re-deposit Rs.2,85,331/-.

Considering the facts of the case, the respondent No.1 is directed to deposit Rs.2,85,331/- with the Registry of this Court within two months. In addition, the respondent No.1 shall furnish solvent surety for an amount of Rs.5,00,000/- i.e. Rs.3,08,602/-, the balance amount as claimed by the appellant and interest on the excess amount given to the respondent No.1-claimant, if ordered by this Court. The solvent surety for Rs.5,00,000/- shall be furnished by the respondent No.1 to the satisfaction of the learned Registrar (Judicial) of this Court within two months.

If the above order is not complied, the appellant will be entitled to recover the amount of Rs.5,93,933/- from the respondent No.1, by filing execution proceedings.

The civil application is allowed in the above terms.

JUDGE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : P.M. Adgokar.

Uploaded on : 22-08-2016.

P.A. to Hon'ble Judge.