

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

CIVIL APPLICATION NO. 967 OF 2014
IN FAST/29074/2013

ASHOK SHENPHADU PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for the Applicants : Shri Kshirsagar Hemraj P.
AGP for the Respondents/ State : Shri Y.G.Gujrathi.

...

**CORAM: RAVINDRA V. GHUGE
AND
SUNIL K. KOTWAL, JJ.**

DATE :- 28th November, 2017

Per Court :

1 The Applicants, who are the original Claimants and who have preferred the First Appeal in this Court, by this Application, seek exemption from paying the court fees of Rs.1,33,230/- on the ground that they are indigent persons and as such, Order 33 Rule 1 of the Code of Civil Procedure would assist the Applicants in seeking such an exemption.

2 The learned Advocate for the Applicants submits that these Applicants have no properties of any nature whatsoever and as such, are unable to pay the court fees in relation to the claim put forth in the First Appeal.

3 We have considered the effect of Explanations I, II and III

below Rule 1 of Order 33 of the Code for Civil Procedure for the purpose of this application. Order 33 Rule 1 with three explanations read as under:-

"Order XXXIII (Suits by indigent persons)

1. *Suits may be instituted by indigent person.-
Subject to the following provisions, any suit may be
instituted by an indigent person.*

Explanation I: A person is an indigent person,—

- (a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or*
- (b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject matter of the suit.*

Explanation II: Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III: Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity."

4 Explanation II, therefore, makes it clear that any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person and before the decision of the

application, shall be taken into account while considering the question whether or not, the applicant is an indigent person. In the light of Explanation II, we do not find it necessary to cause an enquiry into the means of an indigent person under Rule 1-A of Order 33.

There is no dispute that the Applicants have been granted Rs. 12,73,840/- by the Special Land Acquisition Officer.

5 At this stage, the learned Advocate for the Applicants submits that he does not have instructions as to whether, the Applicants have withdrawn the said amount or not.

6 We cannot ignore that these Applicants are poor agriculturists, who have lost their lands in a public project and are litigating for enhancement of the compensation amount. If this application is simplicitor rejected, either the Applicants will have to deposit the court fees in this Court or else, the First Appeal might get rejected.

7 In these peculiar circumstances, in order to ensure that the ends of justice are met, we deem it proper to pass an equitable order based on the subsequent events. This Civil Application is, therefore, partly allowed on the following conditions:-

- (a) If the amount of compensation of Rs.12,73,840/- has not been withdrawn by the Applicants, the Special Land Acquisition Officer shall transmit the amount of Rs.1,33,230/- to the Registry of this Court forthwith, towards the payment

of court fees in the First Appeal filed by these Applicants. After the said amount is received by the Registry of this Court, the First Appeal shall then be registered.

- (b) The Special Land Acquisition Officer shall ensure that the above amount is transmitted to this Court, whether or not, the Applicants make an application for withdrawal of the amount.
- (c) In the event, the Applicants have already withdrawn the amount of Rs.12,73,840/- from the Special Land Acquisition Officer, this Civil Application shall stand disposed of only if the Applicants deposit the court fees of Rs.1,33,230/- in this Court within a period of EIGHT WEEKS from today, failing which, the First Appeal shall not be registered and shall stand disposed of.