

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

903 CIVIL APPLICATION NO.10940/2014

IN

FIRST APPEAL NO.1368 OF 2014

WITH

CA/7314/2014 IN FA/1368/2014 WITH WITH
FA/1369/2014 WITH CA/7318/2014 IN FA/1369/2014
WITH FA/1370/2014

M/S MARUTI CONSTRUCTION ENGINEERS AND CONTRACTORS
THRPARTNER NANDED AND OTHERS

VERSUS

THE EXECUTIVE ENGINEER LOWER TERNA CANAL DIV 2
LATUR AND OTHERS

...

Advocate for Applicant: Mr. AS Bajaj
Mr. Surwase B.R., Adv. For Resp.No.1.

CORAM : P.R.BORA, J.

DATE : 19th July, 2017.

PER COURT :

1) Heard. The applicant, who is the decree holder, has filed the present application, seeking withdrawal of the amount deposited by the present respondent, i.e. judgment debtor.

2) The decree passed in Special Civil suit No.146 of 1995 has been challenged by the appellant by filing the appeal before this court,

wherein this Court, vide order passed on 7th August, 2014 had granted ad interim stay to the execution of the decree impugned in the present appeal on condition that the appellant deposits the decreetal amount of Rs.1,51,74,646/- in this Court. Accordingly, the said amount has been deposited and the applicant has sought withdrawal of the said amount.

3) Shri Bajaj, learned Counsel appearing for the applicant, submitted that the applicant is fighting for his bonafide and genuine claim since last several years. The learned counsel further submitted that after fully adjudication, the Court has passed the decree in his favour and as such, he is entitled to withdraw the entire said amount. The learned Counsel, therefore, prayed for permitting the applicant to withdraw the entire said amount.

4) The application has been opposed by the respondent, i.e. appellants. Affidavit in reply

opposing the application is filed by Shri Balaji Rawanrao Wadikar, Sub Divisional Officer, Lower Terna Canal Division No.2. Shri Surwase, learned Counsel appearing for the appellant, submitted that the lower court, without any sufficient evidence, has passed the money decree of huge amount against the appellants. The learned Counsel submitted that substantial grounds are raised by the appellant in exception to the impugned judgment and award. The learned Counsel submitted that the mistake committed by the trial court is apparent on the face of record and in such circumstances, no amount can be permitted to be withdrawn by the decree holder, i.e. present applicant. The learned Counsel submitted that the matter can be heard finally and since the amount has been deposited by the appellant in this court, interest of the decree holder is sufficiently protected.

5) After having heard the arguments of the learned counsel appearing for the parties, it is

revealed that the appellant seems to be more aggrieved with the compensation amount awarded by the trial court to the tune of Rs.38,25,050/- and the interest as awarded by the trial court to the tune of Rs.61,12,646/-. The learned Counsel for the applicant has provided the particulars of the decreetal amount in tabular form. The contents whereof reveal that barring aforesaid two amounts, the other claims were raised towards the work done by the decree holder and the same have been allowed by the court.

6) Though at this juncture, it may not be just and proper to make any more discussion on merits of the issues raised by the parties and the submissions made in regard to the withdrawal of the deposited amount, it appears to me that, it would be wholly unjust and improper to outrightly reject the application filed by the decree holder. As noted earlier, the principal grievance, as it appears from the arguments of learned counsel for the respondents, is in

respect of the amount awarded by the Trial Court towards the compensation and the interest. The said amount in total comes to around Rs.99,00,000/-. The decree is of the amount of Rs.1,51,74,646/-. In the circumstances, I feel that ends of justice would be met if the decree holder is permitted to withdraw the sum of Rs.60,00,000/- on condition to furnish a solvent surety in the like amount. Hence, the following order,-

ORDER

- i) The application is partly allowed. The applicant is permitted to withdraw the sum of Rs.60,00,000/- (Rupees sixty lacs) subject to furnishing a solvent surety in the like amount to the satisfaction of Registrar (Judicial) of this court;
- ii) Balance amount, if not already invested in FDR, be invested in FDR of any Nationalized Bank, initially for a period of two years, and if so required for further period till disposal of the appeal;

- iii) Hearing of the appeal is expedited;
- iv) Learned Counsel for the applicant, i.e. original decree holder submits that he is ready to prepare and furnish on record private paper book within two months;
- . Stand over after two months.

(P.R.BORA,J.)

bdv/