

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

4 CIVIL APPLICATION NO. 14293 OF 2017
IN FAST/9423/2016

SUNIL KANTILAL JAIN THR ATTORNEY MEGHRAJ UGAMRAJ JAIN
VERSUS

THE EXECUTIVE ENGINEER MINOR IRRIGATION DIVISION,
JALNA THR SUNIL NISHIKANT GODBO

...
Advocate for Applicant : Mr. Mahesh R. Sonwane
Advocate for Respondent No. 1 : Mr. S.C. Arora
AGP for Respondent No. 2 : Mr. S.R. Yadav

...
CORAM : K.K. SONAWANE, J.

DATED : 07TH DECEMBER, 2017.

Order :-

1. Heard learned counsel for appearing parties.
2. Perused the application filed on behalf of applicant seeking permission to withdraw the compensation amount deposited in this Court in present appeal. Learned counsel for the applicant submits that amount deposited in this court is payable to the claimant/applicant as per the award passed by learned Reference Court. He submits that learned Reference Court has rightly appreciated the circumstances on record and awarded enhanced compensation amount of the fruit bearing trees acquired on behalf of respondents.
3. Mr. Arora, learned counsel for respondent-Acquiring Body vociferously opposed the contentions put forth on behalf of applicant and submits that findings of the Reference Court appears to be self contrary. Learned Reference Court was reluctant to rely upon the evidence of private valuer in one breath and another breath learned Reference Court determined the marked value of the fruit bearing trees by appreciating the

evidence of private valuer and raised objection for withdrawal of the amount. He has also raised objection about the number of trees shown acquired in this reference petition.

4. In view of nature of objections raised in the appeal, I find that some part of the compensation amount is required to be allowed to withdraw by the applicant to enjoy the fruits of the decree passed by Reference Court. Rest of the amount would be directed to be deposited in FDRs Account to protect the interest of the appellant-Acquiring Body. Definitely, it would sub-serve the purpose in the interest of justice.

5. Accordingly, application stands partly allowed. Applicant Sunil Kantilal Jain himself is allowed to withdraw 50% of the amount deposited in this court filed on behalf of the appellant -Acquiring Body. Out of this 50% amount, 25% amount be allowed to be withdrawn by furnishing undertaking to the satisfaction of Registrar (Judicial) of this Court to the effect that in case adverse situation, if any, arises after adjudication of the appeal, applicant would refund the amount so withdrawn within stipulated period as directed by this Court. Rest of 25% amount is allowed to be withdrawn by Sunil Kantilal Jain himself on furnishing one solvent surety of like amount. The Registry to do the needful for disbursement of the amount in favour of Sunil Kantilal Jain as directed above. Whatever the balance amount remained to be disbursed, be invested in FDRs Account in any Nationalized Bank initially for a period of two years or till adjudication of the appeal on merit, whichever is earlier.

6. Civil Application stands disposed of accordingly.

Sd/-
[K. K. SONAWANE]
JUDGE