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

**CIVIL APPLICATION NO.13598 OF 2017
IN
FIRST APPEAL NO.2113 OF 2015**

Chandrakalabai Radhakishan Brijwasi,
Died, Through her L.Rs. & anr.

..APPLICANTS

VERSUS

The State of Mah. & anr.

..RESPONDENTS

Mr B.R. Kedar, Advocate for applicants;
Mr S.S. Dande, A.G.P. for respondent no.1

**CORAM : PRASANNA B. VARALE
AND
SUNIL K. KOTWAL, JJ.**

DATE : 19th December, 2017

ORAL ORDER:

Heard Mr Kedar, learned Counsel for quite some time.

2. The submission of the learned Counsel Mr Kedar on the backdrop of a prayer seeking modification or relaxation of the condition is, the condition imposed on the applicants is onerous and it puts an additional burden on them. It was also the submission that in identical cases the Court below permitted withdrawal of the amount on a condition of indemnity bond.

3. Mr Dande, learned A.G.P. appearing for respondent no.1 opposed the application. He submits that the applicants cannot take benefit of the order of the Court below, dated 1st January, 2015 as the facts in the matter of the applicants are different. The second submission of Mr Dande is, the

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learned Court below permitted the withdrawal of amount on indemnity bond and no security of the amount is sought for. It may cause some prejudice to the State.

4. On the aforesaid rival submissions, we have gone through the material placed on record. It was an attempt of Mr Kedar to submit before us that the applicants will have to bear burden of Rs.9 Lakhs annually to comply with the condition of bank guarantee. On perusal of the order, we find that the applicants are permitted to withdraw 50% of the amount unconditionally and for 50% of the amount, the condition of bank guarantee was imposed. There cannot be any dispute that the Court, while protecting the interest of the applicant and also protecting interest of the State or the acquiring body has imposed certain conditions to secure the amount.

5. Insofar as the submission of additional financial burden is concerned, we have gone through the communication placed on record, dated 22nd January, 2016, forwarded by Janata Sahakari Bank Ltd., Pune. As per the said communication, each of the applicants will have to bear the burden of Rs.4 Lakhs and odd annually. The order dated 1st January, 2015, on which the learned Counsel placed heavy reliance shows that on peculiar facts, the said order was passed, namely, the failure of acquiring body to deposit the amount in this Court within stipulated period. Considering these facts, we are unable to accept the submission of Mr Kedar for relaxation or modification of the order passed by learned Civil Judge Senior Division, Latur, below Exh.13 in Special Darkhast No.114 of 2010, in LAR No.403 of 1999.

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6. Insofar as alternative prayer of Mr Kedar for fixing the appeal for expeditious hearing is concerned, our attention was invited to the statement made in the application that out of these applicants, two applicants are in their advanced age, namely, Radhakishan, who is of 81 years of age, Minakshi, who is of 69 years of age and Gopal, who is of 60 years of age. In view of the ground raised by the learned Counsel, place the appeal in the list of the appeals of senior citizens and accordingly be fixed for hearing.

Civil Application is disposed of accordingly.

(SUNIL K. KOTWAL, J.)

(PRASANNA B. VARALE, J.)

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