

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.250 OF 2017

Mr. Shrimant Mahadeo Kamble &
Anr.

...Appellants

Versus

Mr. A. Latif Rukmoddin Attar & Ors.

...Respondents

.....

Dr. Ramdas P. Sabban for the Appellants.

Mr. Surel S. Shah for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 19th JUNE, 2017.

P.C.:-

The Appellants herein have challenged the impugned order dated 3rd January, 2017, whereby the learned Civil Judge, Senior Division, Solapur has allowed the application for injunction filed by the Respondent No.1 and restrained the Respondent Nos.2 and 4 from disbursing the amount in respect of the land acquisition proceedings to any other person till the decision of the suit.

2. It is submitted that after the disposal of the application for injunction, the Land Acquisition Officer has deposited the amount in respect of the Land Acquisition proceedings before whom the Special

Civil Suit No.200 of 2016 is pending.

3. In the course of hearing Mr. Shah, the learned counsel for the Respondent No.1 has tendered an affidavit of the Respondent No.1, which is taken on record and marked 'x-1' for identification. In the said affidavit, the Respondent No.1 has stated as under:

“2. I say I have no objection to the Appellant herein from withdrawing the amount deposited by the Special Land Acquisition Officer No.1, Zilla Parishad office compound, Solapur and which is lying in the office of Civil Judge Senior Division, Solapur, subject to the following

(i) That the Appellants herein and all adult members of their family filing an undertaking that, the withdrawal of amount is subject to the outcome of the Suit and that they would bring back the amount alongwith such interest as the Ld. Trial court would finally adjudicate and/or direct, and

(ii) That the Appellants would also furnish Bank Guarantee or security to the satisfaction of the Ld. Trial Court, who is seized of the dispute (Sp.C.S. No.200/2016) to the extent of amount to be withdrawn.

(iii) That I be heard by the Ld. Trial Court before accepting the Bank Guarantee or Security which would be furnished by the Appellants.”

4. The learned counsel for the Appellants, upon instructions undertakes to give an undertaking as required by the Respondent No.1 in para 2(i) of the said affidavit. He further undertakes on behalf of the Appellants to give security to the satisfaction of the 2nd Jt. Civil

Judge, Senior Division, Solapur to the extent of the amount to be withdrawn.

5. The statements made by the Respondent No.1 in affidavit as well as the statements made on behalf of the Appellants are accepted.

6. In the light of the statements made by the Respondent No.1 in the affidavit as well as in the light of the statements made by the learned counsel for the Appellants on behalf of the Appellants, The Appeal is disposed of in following terms :-

(i) The Appellants are permitted to withdraw the amount deposited before the 2nd Jt. Civil Judge, Senior Division, Solapur by the Special Land Acquisition Officer No.1, Zilla Parishad office, Solapur.

(ii) The Appellants herein and the adult members of his family residing with him shall give an undertaking that the withdrawal of the amount is subject to the outcome of the suit and further that they would deposit the said amount with interest before the 2nd Jt. Civil Judge, Senior Division, Solapur, if it is finally

decided that they are not entitled to the said amount.

(iii) The Appellants shall furnish security to the satisfaction of the 2nd Jt. Civil Judge, Senior Division, Solapur, to the extent of the amount to be withdrawn.

(iv) The learned Judge, shall hear the Respondent No.1 before accepting the security.

7. In view of above, the aforesaid Appeal stands disposed of.

8. It is made clear that all the issues and contentions of the respective parties are expressly kept open.

9. In view of disposal of the Appeal, the Civil Application No.332 of 2017 does not survive and hence, disposed of.

(ANUJA PRABHUDESSAI, J.)