

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

907 FIRST APPEAL NO. 3999 OF 2017

- 1) Basni s/o. Devidas Londhe
Age: 55 years, Occu.: Agriculture
- 2) Laxman s/o Devidas Londhe
Age: 50 years, Occu.: Agrilcuture
- 3) Rambhau s/o.Devidas Londhe
Age: 45 years, Occu.: Agriculture

All R/o.Rui Pimpla

Tq.Wadwani, Dist.Beed.

.Appellants

VERSUS

- 1) The State of Maharashtra,
Through: The Collector, Beed.
 - 2) The Executive Engineer,
Beed, Irrigation Division,
Dist.Beed.
- ..Respondents

...

Advocate for Appellants : Mr.Thombre C.V. and
Mr.Patel S. Farhan

AGP for Respondents/State : Mr.A.D.Namde

...

CORAM : M.S.SONAK, J.

DATE : 2.2.2018

ORAL JUDGMENT:-

- 1) Heard Mr.C.V.Thombare learned counsel for the

appellants and Mr.A.D.Namde learned AGP for the respondents. At the request and with the consent of the learned counsel, this appeal is taken up for final disposal at the stage of admission.

2) The appeal is against the Judgment and order dated 1.12.2016 by which the Reference Court at Majalgaon has dismissed the appellants' reference seeking enhancement of compensation on the ground that the appellants or their Advocate failed to appear before the Reference Court and adduce evidence in support of their claim for enhancement.

3) The learned counsel for the appellants submits that earlier, the Reference was made and registered before the Reference Court at Beed. Thereafter, the References was transferred to the Reference Court at Majalgaon. On account of this transfer, the Advocate, who was from Beed, could not keep a proper track on this matter and

there was lapse on his part in attending the proceedings at Majalgaon. He submits that taking into consideration these circumstances, it is only appropriate that yet another opportunity is granted to the appellants.

4) The learned AGP submitted that several opportunities were granted to the appellants as recorded in the impugned Judgment and award. He submits that in the case of *Shiv Cotex Vs. Trigun Autoplast Pvt.Ltd. & others* [2012(2) *Mh.L.J.*, 439] it has held that a party to suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be led in by it or the matter should be heard. He submits that the Reference Court has rightly relied upon this ruling and rejected the Reference, as no evidence was forth coming from the appellants.

5) In this case, there is no doubt that there was lapse

on the part of the Advocate for the appellants. However, the lapse is not either intentional or put-forth as a part of some dilatory strategy. In such matters, it is found to be some lapse, however, as long as lapse is not malafide or intended to cause delay the proceedings, the utmost consideration shall be given to the suitor.

6) In this case the appellants have already lost their lands to acquisition. The appellants are only seeking for enhanced compensation. The appellants have not gained anything. The appellants had engaged a Advocate and they relied upon him to do the needful. The reference was instead initially registered in the Court at Beed and thereafter, has transferred to Majalgaon. Since, the Advocate is from Beed, it appears that there was some difficulty in attending the matter at Majalgaon. upon cumulative circumstances of this case, it is appropriate to grant the appellants yet another opportunity to pursue the Reference. Accordingly, the

impugned Judgment and award is set aside.

7) The matter is remanded to the Reference Court at Majalgaon for fresh adjudication on merits and in accordance with law.

8) The Reference Court will afford a fresh and adequate opportunity to both the parties while disposing of the Reference.

9) The parties to appear before the Reference Court at Majalgaon on 12.2.2018 at 11:00 a.m. and file an authenticated copy of this order.

10) The appeal is allowed in the aforesaid terms.

11) There shall be no order as to costs.

[M.S.SONAK, J.]