

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6200 OF 2018
IN
FIRST APPEAL NO. 4048 OF 2016

PUNDLIK ZOPDU SARODE (DIED)
THROUGH LRS KAMALBAI AND OTHERS
VERSUS
THE AREA MANAGER,
MIDC JALGAON AND OTHERS.

Mr. Ajeet B. Kale, Adv. for applicants.
Mr. S.S. Dande, Adv. for respondent NO.1.
Mr. A.M. Phule, AGP for respondent No.2.

CORAM : K.K. SONAWANE, J.
DATE : 14th JUNE , 2018.

PER COURT:

Heard learned counsel for the applicant, learned counsel for the respondent MIDC as well as AGP for the State of Maharashtra. Perused the application. The applicants moved the present application seeking modification of the earlier order passed by this court dated 14th February 2018 wherein, the applicants/appellants are permitted to withdraw 50% of the amount deposited in this court towards compensation on furnishing undertaking to abide by the final order of the appeal.

2] Shri Kale, learned counsel for the applicant submits that in the similar nature of connected appeal, the coordinate Bench of this court under order dated 4th September. 2015, allowed the applicants to withdraw 25% of the amount deposited in the Court on furnishing undertaking and rest of the 75% of the amount on furnishing solvent surety/security of the like amount. The learned counsel Shri Kale further added that when the impugned order

dated 14th February 2018 was passed, at that time he was absent. He had filed leave note on record. This court, instead of accommodation, proceeded to adjudicate the present application on merit and allowed the applicant to withdraw 50% of the amount on furnishing undertaking to abide by the final order of the appeal. According to learned counsel Shri Kale, in view of the earlier order passed by the coordinate bench in September 2015, the applicants/original claimants are entitled to get withdrawal of the entire 100% amount on furnishing undertaking as well as solvent surety/security, but this court did not extend any opportunity to the claimants to bring to the notice of this court in regard to earlier order passed on 4th September, 2015. Therefore, learned counsel prayed to modify the impugned order dated 14.2.2018 and allow the applicants/original claimants to withdraw 100% amount on certain terms and conditions which are imposed by the coordinate Bench of this court in the earlier order dated 4th September, 2015 in connected petitions.

3] Having given anxious consideration to the arguments advanced on behalf of both sides, it reveals that the coordinate Bench of this court in earlier order dated 4th September, 2015, in connected proceedings of the same award, allowed the applicants/original claimants to withdraw 25% of the amount deposited in the Court on furnishing undertaking and 75% on furnishing solvent surety/security of the like amount. IN view of rule of parity, it would be justifiable to apply similar yardstick in this petition for allowing the applicants/claimants for withdrawal of the amount, on similar terms and conditions. It would not cause any injustice and prejudice to the respondent Acquiring Body. In contrast, it would sub-serve the purpose in the interest of justice.

4] Accordingly, the earlier order passed by this court dated 14th February, 2018, is required to be modified. Hence, the application stands allowed. The order passed by this court dated 14th February, 2018 is hereby modified. The applicants/claimants are permitted to withdraw 25% of the amount deposited by Acquiring body in this court, on furnishing undertaking

that in case any contingency arises, the applicants/claimants would refund the amount as per the directions of this court. The applicants/claimants are further allowed to withdraw rest of the 75% of the amount, on furnishing solvent surety/security of like amount in this court. Accordingly, the application stands allowed. Registry to do the needful for disbursement of the amount, as mentioned above. The application stands disposed of accordingly.

[K.K. SONAWANE]
JUDGE.

grt/-