

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

WRIT PETITION NO. 6852 OF 2018

**SAURASHTRA CEMENT LIMITED
VERSUS
DATTATRAYA NANDKUMAR DUBE AND OTHERS**

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Advocate for the Petitioner : Shri Y. B. Bolkar
Advocate for Respondent Nos. 4 to 9 : Shri P. S. Chavan

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th OCTOBER, 2018.

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PER COURT :

1. I have considered the strenuous submissions of the learned Advocates for the respective sides.

2. The service affidavit has been tendered by the petitioner on 03/08/2018 in pursuance to sending the notice to respondent Nos. 1 and 2 by RPAD. Copy of the print out report indicates that notice has been duly served on respondent No. 2 and the said item has been delivered.

3. When this matter was heard on 31/08/2018, this Court had passed the following order :-

"1. The applicants are the original claimants

whose right to compensation granted under the Motor Accidents Claim has been upheld by the judgment of this Court (Coram : V.K. Jadhav, J.) dated 08th March, 2017, in First Appeal No. 2849/2016. The relevant clauses of the said order after the original award dated 19th December, 2015, was subjected to a modification by this Court read as under :

“III. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Osmanabad dated 19.12.2015 in MACP No.106/2010 is hereby modified in the 2 following manner :-

a] The respondents no. 1 and 2 do pay compensation of Rs.33,74,840/- (Rs.Thirty Three Lacs Seventy Four Thousand Eight Hundred and Forty only) including the ‘No Fault Liability’ amount of Rs.50,000/- to the claimants with interest @ 9% p.a. from the date of application till realization of the entire amount.

IV. In case, if the amount is paid by the appellant-registered owner in total to the claimants, the appellant registered owner is at liberty to recover the amount from the Respondent Dattatraya S/o. Nandkumar

Dubey. “

2. The said decree in the First Appeal which was filed by Saurashtra Cement Limited, in which, they partly succeeded, has been put to execution by the original claimant. Considering that the transfer certificate from Osmanabad to Mumbai, was accepted by the impugned order dated 08th February, 2018, by the executing Court, the petitioner approached this Court. By order dated 02nd July, 2018, passed by this Court (Coram : S.P. Deshmukh, J.) the petitioner was directed to deposit half of the amount, which in any 3 case is expected to be paid to the claimant, in this Court. An amount of Rs. 29,09,367/- was deposited on 30th July, 2018.

3. This application, is therefore, moved by the claimants seeking leave to withdraw the said amount as, despite a rigorous trial from 15th March, 2010, till this date, they are yet to receive the benefits though the sole bread earner has passed away in a vehicle accident.

4. Learned counsel for the petitioner, on the one hand, does not oppose the withdrawal of the amount, but on the other hand, makes a request that the claimants should tender an affidavit undertaking that they would not claim further

amounts from the petitioner, in view of the direction of the first appellate Court reproduced above.

5. I find that the issue raised in the petition is not as regards how much amount should the original respondents are to pay. This issue is already closed by the judgment of this Court in the First Appeal, operative part of which is reproduced above.

6. In this backdrop, as this Court, while staying the execution proceedings found it appropriate to subject the petitioner to depositing its share of the compensation amount, I do not find that these applicants are required to tender any specific undertaking that they would preclude themselves from making any further claim against the petitioner. The said issue is to be dealt with by the executing Court. The quantum of compensation is also not to be adjudicated upon as that also has been settled by this Court while deciding the First Appeal.

7. In view of the above, this application is allowed and the claimants are permitted to withdraw the amount of Rs.29,09,367/- by making individual applications for withdrawal, duly identified by the advocate, with recent

photographs, recent address proof and copies of the Election Commission Voter ID Card/Aadhar Card. The said amount would be shared equally by the applicants keeping in view the directions of the MACT, Osmanabad, by which, remaining 50% of the amount is to be kept in fix deposit receipt in the name of the widow Smt. Surekha W/o. Subhash Rathod in any Nationalized Bank for the period of three years from the date of investment.

8. It is made clear that each of these applicants would submit an affidavit undertaking, by which, they would undertake to re-deposit the amount in this Court in the event of any dispute amongst themselves and the petitioner/Company would stand indemnified in view of any such dispute."

4. The learned Advocate for the petitioner strenuously contends that neither the petitioner is inclined to deposit the share of respondent No.1, nor he had taken any decision today whether that amount is to be recovered from him.

5. The judgment in the First Appeal dated 08/03/2017 clearly concludes that the petitioner herein, has to pay the

entire amount and recover the said amount from respondent No.1, who is to shoulder the responsibility of making the payment jointly or severally. If this Court would have allowed this petitioner to bear the burden of paying 50 % of the amount to the extent of its share leaving the original claimants to seek recovery of the remaining 50 % amount from respondent No.1, this case could have been looked at from a different angle. The judgment of this Court in the First Appeal has, therefore, closed all arguments on this point as to whether, the petitioner should bear the burden only to the extent of 50 % of the compensation amount.

6. It is in above backdrop, that the impugned order has been passed on 08/03/2018 thereby transferring the MACP Darkhast No. 46/2017 under Order 21 Rule 6 of the CPC to the competent Court at Mumbai since the property sought to be attached by the original claimants belonging to the petitioner herein, is situated at Mumbai.

7. The learned Advocate for the petitioner/Company has strenuously contended that when respondent No.1, who is to

shoulder the burden of 50 % payment of compensation, resides at Solapur and his property which can be liquidated for recovering the said amount is also situated at Solapur, the impugned order is bad in law since the Darkhast proceedings will have to be transferred to the competent Court at Solapur.

8. Considering the order of the First Appellate Court dated 08/03/2017, as recorded in this order hereinabove, the said request of the petitioner cannot be entertained. If the First Appellate Court would have recorded that this petitioner shall pay only 50 % of the compensation amount thereby leaving it open to the claimants to recover the remainder amount from respondent No.1, then the property of respondent No.1 at Solapur could have been attached and for which purpose, the execution proceedings could have been transferred to Solapur.

9. In view of the above, I do not find that the impugned order dated 08/03/2017 could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-