

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

939 CIVIL APPLICATION NO.9657 OF 2018
IN FA/2404/2016 WITH CA/610/2015 IN FA/2404/2016

WITH

CA/9660/2018 IN FA/2404/2016 WITH CA/9661/2018 IN
FA/2404/2016 WITH CA/9662/2018 IN FA/2404/2016 WITH
CA/12309/2018 IN FA/2404/2016 WITH CA/12310/2018 IN
FA/2404/2016 WITH CA/12311/2018 IN FA/2404/2016

DINANATH NAGNATH MAIRAN (DIED) LRS. VIJAYA DINANATH
@DINKAR MAIRAN

VERSUS

THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIV. OSMANABAD
AND ANR

...

Advocate for Applicant : Mr. Tanwade Vikas S.

Mr. S. G. Sangle, Adv. For R /1 ;

Mr. AM Phhle, AGP for Respondent No.2

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CORAM : P.R. BORA, J.

DATED : 4th OCTOBER, 2018.

PER COURT:-

1. All these applications are filed seeking withdrawal of the amount of compensation deposited by the acquiring body in FA No.2404/2016. From the material it is revealed that one Dinanath Nagnath Mairan has filed LAR No.124/2007, seeking enhancement of the amount of compensation before the Reference Court. During pendency of the said Reference Application, said Dinanath died and his legal heirs were taken on record. Thereafter, wife of Dinanath viz. Bhagirathibai also died. However, since her legal heirs were already on record, only her name was deleted from the array of legal heirs of deceased Dinanath. From the application filed it is also revealed that one of the daughters of deceased Dinanath was not added as legal heirs of

deceased Dinanath and it is the contention of son of said daughter viz. Lakhan Shiddheshwar Kamthane_ (applicant in CA No. 12311/2018) that he applied to the Executing Court and accordingly his name has been added as co-decree holder in the original execution proceedings. It is the further contention of the applicants that they have arrived at the compromise before the Executing Court and they have decided to share the amount of compensation in equal proportion. Such compromise pursis is also placed on record.

2. The learned counsel have submitted that in companion matters arising out of the same acquisition proceedings, this Court has permitted to withdraw the claimants therein 40% of the deposited amount and 60% balance amount is directed to be invested in Fixed Deposit Receipt and in such circumstance, request is made for permitting the applicants to withdraw 40% deposited amount.

3. After having considered the submissions though I am convinced that the applicants in the present appeal also deserve to be permitted to withdraw some amount, as has been permitted in the companion matters, I find it proper to transmit the said amount to the Executing Court so that the Executing Court may, verify all other aspects, such as whether the compromise arrived between the parties is legal and proper, since from the documents it is difficult to gather whether any such observation is recorded by the Executing court. The Executing Court may, if convinced, disburse the amount as per the compromise arrived

(3)

at between the parties. Hence, the following order, -

ORDER

i. 40% of the deposited amount be transmitted to the Executing Court – Civil Judge, Senior Division, Osmanabad with a direction that the Executing Court shall, in view of the compromise arrived at between the parties, after verifying the correctness and legality of the said compromise, pass further order for disbursement of the said amount in terms of the said compromise.

ii. The respective claimants shall submit their undertaking before the Executing Court, which in turn shall forward the said undertaking to this Court.

iii. Civil Applications stand disposed of.

4. List the matter after four weeks.

5. To be placed along with FA No.2403/2016 and 2405/2016.

(P.R. BORA)
JUDGE

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