

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

**CIVIL APPLICATION NO. 9749 OF 2018
IN
FIRST APPEAL NO. 3907 OF 2017**

Kaushabai Bhima Pavse & Anr.

... Applicants

VERSUS

The Executive Engineer,
Upper Pravara Dam Division, Sangamner
& Anr.

... Respondents

.....
Mr S. K. Shinde, Advocate for the applicants
Mr B. R. Surwase, Advocate for respondent No.1
Mr A. P. Basarkar, AGP for respondent No. 2
.....

**CORAM : A. M. DHAVAL, J.
DATE : 02ND AUGUST, 2018.**

PER COURT :-

1. The applicants have filed this application for withdrawal of the amount.
2. Mr B. R. Surwase, learned advocate for respondent No. 1 submits that, earlier he had deposited an amount of Rs. 84,212/- and later on, he has deposited Rs. 2,68,934/-, total Rs. 3,53,146/-. He opposes the application for withdrawal of amount on two grounds viz. (i) compensation of Rs. 71,798/- is given for 50 guava trees without any base and (ii) the award shows that there were no such trees. The reference Court has relied on the contents of the claimants in the suit filed by them, which was not permissible.

3. I agree that the learned reference Court could have awarded compensation for trees only if those were shown in the joint measurement. There is no such reference in his order. Besides, he has awarded interest at the rate of 9% p.a. from the date of award and after one year at the rate of 15% p.a., but referred to Section 28 as well as Section 34. The claimants are entitled for interest only u/s 28 or 34 and not under both the sections on the entire mount payable u/s 23.

4. Excluding the amount of trees and other statutory benefits calculated on the basis of price of trees and excess interest, the remaining amount be paid to the applicants, 50% subject to furnishing of personal undertaking, 25% subject to solvency and remaining 25% subject to bank guarantee. Any amount withdrawn earlier shall be deducted from the said amount.

5. Civil Application stands disposed of.

[A. M. DHAVAL]
JUDGE

Punde