

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

18 CIVIL APPLICATION NO. 10033 OF 2017
IN FA/1759/2014 WITH CA/10034/2017 IN FA/1765/2014 WITH
CA/10035/2017 IN FA/1761/2014 WITH CA/10036/2017 IN FA/1766/2014
WITH CA/10037/2017 IN FA/1762/2014

DHANANJAY DHYANOBA KUTWAD AND ANR
VERSUS
THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, LATUR AND ORS

...
Advocate for Applicants : Mr. V.D. Sapkal with Mr. Laxmikant C. Patil
AGP for Respondent No.2: Mr. A.D. Namde
Advocate for respondent No.1 (Acquiring Body) : Mr. S.G. Sangle

CORAM : K.K. SONAWANE, J.

DATE : 9th January, 2018.

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PER COURT:

1] Heard learned counsel Mr. Sapkal for the applicants, learned counsel Shri Sangle for the Acquiring Body as well as learned AGP for the State of Maharashtra.

2] Perused the applications. The learned counsel Mr. Sapkal submits that the respondent No.1 Acquiring Body deposited the decretal amount in a group of first appeals filed in this Court on behalf of the Acquiring Body. Initially, the first appeals were assigned to the Division Bench of this Court for its adjudication on merit, but subsequently, it came to be assigned to this court for further process.

3] When the matters were pending before the Division Bench of this court, in some matters, wherein the Acquiring Body had deposited the entire decretal amount, the present applicants moved an application seeking permission for withdrawal of the amount deposited by the Acquiring Body in this court. After hearing both sides, the Division Bench of this Court was pleased to pass order dated 11.9.2015 and allow the applicants to

withdraw 50% of the amount deposited in this court on furnishing undertaking rest of the 25% amount on furnishing solvent surety and remaining balance amount on furnishing bank guarantee of any scheduled or nationalized bank.

4] According to learned counsel Mr. Sapkal, in the present appeals, the acquiring body had not deposited the entire decretal amount but only deposited part of the amount. Now, the acquiring body has deposited the balance decretal amount and thus, entire decretal amount has been deposited in these appeals. Therefore, by these applications, the applicants seek permission for withdrawal of balance decretal amount deposited lateron in this court, on the same terms and conditions imposed earlier under order dated 11.9.2015 passed by the Division Bench of this court.

5] Learned counsel Mr. Sangle appearing for acquiring body did not dispute the facts and prayed to pass suitable orders in the interest of justice.

6] Admittedly, the Division Bench of this Court under order dated 11.9.2015 granted permission to the claimants to withdraw the amount deposited by the acquiring body on certain terms and conditions. There is also no dispute that while passing the order, the appellant Acquiring Body did not deposit the entire decretal amount. Therefore, the applicants/original claimants were constrained to proceed for withdrawal of whatever amount deposited by the acquiring body in this court. But, lateron the balance decretal amount has been deposited by the acquiring body in this court.

7] In view of earlier order passed by the Division Bench of this court, dated 11.9.2015, there is no impediment to allow the applicants for withdrawal of the amount on the similar terms and conditions by resorting to the rule of party. Hence, the applications stand allowed in terms of prayer clause (B). The applicants are permitted to withdraw 50% of the amount

deposited in this court on furnishing an undertaking to the satisfaction of Registrar (Judicial) of this court, to the effect that in case any adverse situation arises after success of acquiring body in these appeals, the applicants/claimants would refund the amount forthwith in this court.

The 25% of rest of the balance amount deposited in this court be allowed to be withdrawn by the claimants on furnishing one solve surety of like amount.

Rest of the 25% balance amount be permitted to be withdrawn by the claimants, on furnishing bank guarantee of any scheduled or Nationalized bank. Registrar (Judicial) to do the needful for disbursement of the amount in favour of the applicants, as directed above.

8] Civil applications stand disposed of in above terms.

[K.K. SONAWANE]
JUDGE.

grt/-