

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

CIVIL APPLICATION NO.11535 OF 2018 IN
FIRST APPEAL NO.1307 OF 2010

Somnath Ramling Waghmare ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. A.B. Kale, Advocate for applicant
Mr. G.O. Wattamwar, A.G.P. for respondent No.1
Mr. S.S. Dande, Advocate for respondent No.2
.....

WITH

CIVIL APPLICATION NO.11530 OF 2018 IN
FIRST APPEAL NO.1315 OF 2010

Kausalyabai Maruti Khairmode ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. A.B. Kale, Advocate for applicant
Mr. G.O. Wattamwar, A.G.P. for respondent No.1
Mr. S.S. Dande, Advocate for respondent No.2
.....

WITH

CIVIL APPLICATION NO.11533 OF 2018 IN
FIRST APPEAL NO.1312 OF 2010

Sau. Ramkuwarbai Badrinarayan Somani
and another ... APPLICANTS

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. A.B. Kale, Advocate for applicants
Mr. G.O. Wattamwar, A.G.P. for respondent No.1
Mr. S.S. Dande, Advocate for respondent No.2
.....

WITH

CIVIL APPLICATION NO.11536 OF 2018 IN
FIRST APPEAL NO.1313 OF 2010

Radhabai Limbaji Adane ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Mr. A.B. Kale, Advocate for applicant
Mr. G.O. Wattamwar, A.G.P. for respondent No.1
Mr. S.S. Dande, Advocate for respondent No.2
.....

CORAM: PRASANNA B. VARALE AND
MANISH PITALE, JJ.

DATED : 21st SEPTEMBER, 2018.

ORAL ORDER :

1. Heard Mr. Kale, learned counsel appearing for the applicants, learned A.G.P. appearing for respondent No.1 and Mr. Dande, learned counsel appearing for respondent No.2. By way of present applications, the applicants pray for permission to withdraw the Bank guarantees which are submitted by the applicants in this Court as well as interest amount accrued.

Learned counsel Mr. Kale submitted that, by way of an interim order, the appellant was directed to deposit 50% of the amount covered by the award within a stipulated period. Mr. Kale then submitted that, applications were filed seeking modification of the said order and by order dated 27.9.2013, this Court was pleased to reject the application by observing that the earlier order passed by this Court calls for no interference. The order of this Court dated 27.9.2013 is placed on record along with the application at Exhibit C-1. The Division Bench also refers to the preliminary objections of this Court in order dated 25.9.2009. The ultimate observation is reflected in para 4 of the order and the same reads :

“In view of the reasons set out above, we are of the considered view that the order passed by this Court on earlier occasion directing stay to the execution of award on condition of deposit of 50% of the amount covered by the award, does not call for any interference. Applications are devoid of substance hence, stand rejected.”

2. The learned counsel Mr. Kale submitted that, as the applicants were permitted to withdraw initial 50% of the amount subject to submitting Bank guarantees for the 50% of the 50% amount, the applicants have submitted Bank guarantees to that effect. It is then submitted before us that, the respondent No.1 appellant subsequently deposited rest of the 50% amount in this

Court. Then our attention was invited by the learned counsel Mr. Kale to the order passed by the Hon'ble Apex Court on 14.9.2015. It was submitted that, the applicants have approached the Apex Court, seeking relief of the Bank guarantee and the Hon'ble Apex Court passed the order. It would be useful to refer para 4 of the order and same is reproduced as under :

“Having heard the learned counsel for the parties to the lis, we are of the opinion that the prayer made by the appellants requires to be accepted and granted. Accordingly, we pass following order :

We direct that the 50% of the enhanced compensation granted to the appellants shall be released without security whereas balance of 50% shall be released to them on furnishing security to the satisfaction of the Collector.”

3. Then our attention was invited to the order dated 22.6.2018, to which one of was a party (Prasanna B. Varale, J.). Mr. Kale submitted that, attention of the Division Bench was invited to the order of this Court dated 10.3.2017 in Civil Application No.1336/2017 and other companion applications tagged with it. The Division Bench was pleased to observe as under :

“5. In view of the order passed by the Hon'ble the Apex Court, referred to above, all the present civil applications are allowed. In respect of withdrawal of 50% of the amount of compensation, for which the bank guarantee was directed to be furnished by this Court, there would be no need to furnish the bank guarantee and the bank guarantee shall be returned to the applicants. In all these matters, the security as directed by the Hon'ble the Supreme Court, shall be furnished by the applicants to the satisfaction of the Collector. The applicants shall be permitted to withdraw the amount of interest accrued on the amount deposited in Fixed Deposits.”

4. In view of the earlier order passed by the Division Bench, the Application No.7701/2018 was allowed by observing that there was no reason to take a different view than the view taken by the Division Bench of this Court in order dated 10.3.2017. Mr. Kale, the learned counsel for the applicants submits that, in view of the sequence of events and the orders passed by the Division Bench of this Court as well as the Hon'ble Apex Court, the applicants are now permitted to submit a security to the satisfaction of the Collector and are further permitted to withdraw the Bank guarantee with interest accrued on the amount. Mr. Kale then invited our attention to the copy of communication received by him. The same is taken on record and marked “X” for identification.

5. Mr. Kale, the learned counsel submits that, though the Apex Court permitted the applicants to withdraw the amount and further permitted the applicants to withdraw the Bank guarantee, the communication dated 9.1.2017 issued by the Collector, Latur insists upon withdrawal of the amount subject to maintaining the Bank guarantee with the Collector. Mr. Kale submitted that, the Collector, Latur could not have insisted the applicants to continue with the Bank guarantee when the Apex Court and the Division Bench of this Court permitted the applicants to withdraw the amount without insistence of Bank guarantee. The learned counsel then submitted that the applicants are even ready to go before the Collector with certain details for the satisfaction of Collector, but the Collector ought not to have insisted for maintaining the Bank guarantee. Such an insistence causes a serious prejudice as the applicants are put to an additional financial burden, is the submission of Mr. Kale.

6. Though learned A.G.P. as well as Mr. Dande, learned counsel appearing for the acquiring body opposed the applications, we find considerable merit in the submission of Mr. Kale, more particularly in view of the order of the Apex Court and in view of order of this Court dated 10.3.2017 in Civil Application No.1336/2017 and the order of this Court, dated 22.6.2018, wherein reliance was placed on the order of this Court dated

10.3.2017. As Mr. Kale fairly submitted that the applicants are ready to go before the Collector, the applicants are directed to go before the Collector within four weeks from today and the Collector to verify the securities furnished by the applicants to his satisfaction. After this exercise is undertaken by the applicants, the applicants are permitted to withdraw the Bank guarantees with the interest accrued upon the amount, and the Collector, in that case, should not insist for maintenance of the Bank guarantee.

7. With these observations the Civil Applications are disposed of.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-