

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.242 OF 2018
IN WP/6852/2018

SAURASHTRA CEMENT LIMITED
VERSUS
DATTATRAA NANDKUMAR DUBE AND OTHERS

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Advocate for Applicant : Shri Bolkar Yogesh B
Advocate for Respondents 4 to 9 : Shri Chavan P.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 10, 2018
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PER COURT :-

1. The review - applicant who was the petitioner in Writ Petition No.6852 of 2018 and the appellant in First Appeal No.2849 of 2016, submits that paragraph No.4 of the order of this Court dated 25.10.2018 delivered in the Writ Petition be modified so that the applicant would proceed as per the liberty granted in Clause (IV) of the First Appeal judgment dated 8.3.2017.

2. Learned Advocate for the original claimants submits that this application could be allowed as the applicant was already granted the liberty to pay the entire compensation amount and recover the amount which the respondent / Dattatray was actually required to pay in view of the First Appeal judgment dated 8.3.2017.

3. For the sake of clarity, the operative part of the order of the First Appellate Court dated 8.3.2017 is reproduced as under:-

"I. First Appeal is hereby partly allowed. No costs.

II. Cross objection is hereby partly allowed. No costs.

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 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.

V. Rest of the Judgment and Award stands confirmed.

VI. Award be drawn up as per the above modifications.

VII. *First Appeal and Cross Objection accordingly disposed of. Pending civil application, if any, also stands disposed of."*

4. This Court had observed in paragraphs 4 to 8 in its order dated 25.10.2018 as under:-

"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."*

5. This review application is, allowed since the relief granted by the first appellate Court in Clause (IV) of the reproduced order is available to this applicant. It would be at liberty to pay the remainder amount to the original applicants by depositing it before the executing Court at Osmanabad, within one month from today and, thereafter, proceed to act in accordance with the direction at Clause (IV) of the first appellate

Court's order dated 8.3.2017.

6. The statement of the review applicant is recorded that since it would proceed against the respondent Dube as per the judgment of the first appellate Court with reference to his properties situated at Solapur, no proceedings would now be filed by the review applicant before any Court at Mumbai.

(RAVINDRA V. GHUGE, J.)

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akl/d