

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 4324 OF 2017

AND

CIVIL APPLICATION (CAF) NO. 3461 OF 2017

AND

CIVIL APPLICATION (CAF) NO. 4325 OF 2017

AND

FIRST APPEAL ST. NO. 7259 OF 2017

(V.I.D.C. THR. EE, JIGAON PROJECT & ANR...VS.. UTTAM NAMDEO KANDJE & OTH.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri Vinay Dahat, Adv. H/f. Shri J.B.Kasat, Advocate for Applicants.
 Shri N.B.Kalwaghe, Advocate for Respondent Nos.1 & 2.
 Shri S.B.Bissa, A.G.P. for Respondent No.3.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 18, 2018.

CIVIL APPLN.NO. 4324/2017.

Accepting the explanation given in the
 application, delay of 67 days in filing the appeal is condoned.

The civil application is **allowed** accordingly.

CIVIL APPLN.NO.3461/2017.

For the reasons stated in the application, the
 applicants/ appellants are granted leave to prosecute the
 appeal to challenge the award passed by the reference Court.

The civil application is **allowed** accordingly.

FIRST APPEAL ST.NO.7259/2017.

Taken up for hearing on admission.

Heard.

ADMIT

Shri N.B.Kalwaghe, advocate waives notice for the respondent Nos. 1 and 2 and Shri S.B.Bissa, A.G.P. waives notice for the respondent No.3.

Call R & P.

The appellants to file private paper book within six months.

CIVIL APPLN.NO. 4325/2017.

As the appellants have deposited the amount as per the impugned award before the reference Court as pointed by the pursis dated 18th September, 2018, the interim order granted on 23rd August, 2017 to continue until further orders.

The civil application is **allowed** accordingly.

The appeal along with Miscellaneous Civil Applications is filed on 29th March, 2017. Pursis dated 18th September, 2018 filed on behalf of the appellants shows that the awarded amount was deposited by the appellant before the Reference Court vide cheque dated 25th July, 2017. Till

25th July, 2017 the appellant had not taken any steps to circulate the matter for interim orders. The noting on docket shows that the matter was circulated for 23rd August, 2017 on which date this Court passed order on Civil Application Stamp No. 7262 of 2017 and stayed the execution proceedings on condition that the amount should be deposited with the Registry of this Court within 12 weeks.

The learned advocate for the appellants submitted that the appellants had not given instructions and he was not aware that the amount was already deposited before the executing Court/ reference Court. It goes unexplained what prompted the appellants to circulate the matter on 23rd August, 2017 for interim orders.

It is noticed in the appeals filed on behalf of V.I.D.C. that in some cases in which this Court directs that the amount be deposited with the Registry of this Court, the amount is deposited with the Registry of this Court and withdrawal of the amount by the claimants is opposed, but in some cases though orders are passed that amount be deposited with the Registry of this Court, the amount is deposited before the Reference Court/ Executing Court and without pointing out to the reference Court/ Executing Court that appeal is filed to challenge the award, the claimants are permitted to withdraw the amount.

All this is required to be discussed, as in the present case the enhancement of compensation by the reference Court is from Rs.22,000/- per hector to Rs.1,50,000/- per hectare and total amount of Rs.66,18,000/- is involved.

The Executive Director of Vidarbha Irrigation Development Corporation to file affidavit explaining the circumstances in which the amount is permitted to be withdrawn by the claimants without opposing and without pointing out that the appeal is filed before this Court.

The affidavit shall be filed till 19th October, 2018.

List the matter on **26th October, 2018.**

JUDGE

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