

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.1886/2018 IN FIRST APPEAL NO.381/2017

Executive Engineer, Minor Irrigation Division .vs. Dnyaneshwar Bodhke & Ors.

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

Court's or Judge's orders.

Mr. R. S. Yeotkar, Advocate for applicants-respondent no.1.
Mr. M. P. Dhruv, Advocate for respondent no.2.
Mr. N. M. Gaidhane, Advocate for non applicant-appellant.
Mrs. M. Naik, A.G.P. for respondent no.4-State.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 1, 2018

First Appeal No. 381/2017 was withdrawn by the Executive Engineer, Minor Irrigation Division, Wardha, Tq. Dist. Wardha. Prior to withdrawal of the said appeal, the appellant has deposited Rs.26,25,212/- before this Court towards the decretal amount.

Mr. Gaidhane, learned counsel appears for the appellant. He submits that there are inter se disputes between respondent nos.1 and 2. Civil Application No.1886/2018 is filed by Dnyaneshwar Ganpat Bodhke for withdrawal of remaining 50% amount. Whereas, Civil Application No. 2293/2018 is filed by respondent no.2-Subhash Dnyaneshwar Bodhke for withdrawal of the remaining 50% amount.

Record shows that on 10.04.2017, this Court permitted respondent nos.1 and 2 to withdraw 50% of the amount deposited by the appellant. Record shows that, accordingly, respondent no.1 has withdrawn the said 50% amount on the basis of Power of Attorney executed by respondent no.2 in favour of respondent no.1.

For the remaining 50% amount, these two applications are filed by respondent nos. 1 and 2. Respondent

no.2 is disputing claim of respondent no.1 on the basis of Power of Attorney. Thus, there is a serious dispute inter se. According to respondent no.2, in the 50% amount which was already withdrawn by respondent no.2, no share was given to him and, therefore, he alone is entitled to withdraw this remaining 50% amount. However, learned counsel for respondent no.1 submits that the 50% amount was given to respondent no.2. Thus, there is serious dispute between the parties.

Consequently, Registry is directed to remit the remaining 50% amount in the reference Court and the learned reference Court is directed to decide the issue about apportionment of the remaining 50% amount, as claimed by both the parties, after they file appropriate pleadings and after adducing the necessary evidence before the reference Court.

With this, the applications are disposed of. **Registry is directed to remit 50% amount within one month from today.**

JUDGE