

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

CAF No.1882/2017
in
First Appeal St.24945/2017
(Executive Engineer, Medium Project Divn. Nagpur .vs. Smt. Sindhu wd/o
Dilip Musle & ors)

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

Mr. J.B. Kasat, Advocate for Applicant.
Mr. C.R. Najbile, Advocate for Respondent Nos.1 to 3.
Mrs. M.A. Barabde, AGP for Respondent No. 5.

CORAM : Manish Pitale, J.
DATED : February 12, 2018.

This is an application for condonation of delay of 1223 days in filing the appeal. This appeal is filed by the acquiring body and it has been stated in the application for condonation of delay that after the impugned judgment and award dated 3.5.2013 was passed by the Court of Joint Civil Judge, Senior Division, Nagpur (hereinafter referred to as the "Reference Court"). The counsel appearing on behalf of the appellant did not inform the appellant about the said judgment and order. It is contended that when the respondents-claimants filed an application dated 3.12.2015 along with the said certified copy of the impugned judgment and award seeking enhanced amount of compensation in terms of the impugned judgment and award, the appellant first became aware of the passing of the impugned judgment and award.

It is further contended that immediately thereafter on 15.12.2015 a decision was taken to

challenge the impugned judgment and award and a certified copy was applied on 13.1.2016. It is stated in the application that the certified copy was eventually received on 24.11.2016 and that the appeal was thereafter filed on 6.12.2016.

Upon notice being issued on this application, the respondent Nos. 1 to 3-claimants have filed their reply opposing the said application. But, it is not denied in the reply that the aforesaid respondents-claimants first approached the appellant for grant of enhanced compensation in terms of the impugned judgment and award on 6.12.2016. Considering the facts stated in the application on behalf of the appellant, as also the fact that the appellant-acquiring body has deposited the entire amount of compensation awarded by the Reference Court, in this Court, it would be in the interest of justice that the delay is condoned and this appeal is taken up for consideration on merits. Hence the application is allowed and the delay is condoned.

Civil Application No. 1883/2017

This is an application for grant of interim stay. Taking into account the fact that the appellant has deposited the entire amount awarded by the Reference court, in this Court, this application deserves to be allowed and the effect and operation of the impugned judgment and order is stayed.

Civil Application No.1884/2017

This is an application filed on behalf of the

respondent nos. 1 to 3-claimants prayed for deletion of the name of respondent no.4 from the array of parties. The reason stated in the said application is that the said respondent no.4, who was also a claimant in this case, has died and that her legal representatives i.e. respondent nos. 1 to 3 are already on record. The learned counsel for the appellant does not oppose the prayer made in this application. Accordingly, this application is allowed and the name of respondent no.4 is deleted from the array of the respondents.

Civil Application No.1882/2017

This is an application for permission to withdraw the amount of compensation filed on behalf of the respondent Nos. 1 to 3-claimants. For the reasons stated in the application, the same is allowed and the said respondents are permitted to withdraw the amount of compensation deposited by the appellant in this Court, 50% of the amount shall be withdrawn by the said respondents on furnishing solvent surety/security to the satisfaction of the Registrar of this Court and the balance 50% amount shall be withdrawn on furnishing usual undertaking in this Court.

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Heard.

Admit.

Mr. C.R. Najbile, learned counsel waives notice on behalf of respondent nos.1 to 3 and Mrs. Barabde, learned AGP waives notice on behalf of respondent/State.

Call for R. & P.

The learned counsel for the appellant shall file private paper book within a period of six months.

JUDGE

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