

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

907 FIRST APPEAL NO.226 OF 2019

LAXUMAN BAPU HALGUNDE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

....

Advocate for Applicant : Mr. Swapnil S. Rathi
APP for Respondent No.1-State: Mr. S.J. Salgare
Advocate for Respondent No.2 : Mr. S.S. Dande

....

CORAM : P.R. BORA, J.

DATED : 29th JANUARY, 2019

PER COURT:-

1. The present appeal is filed by the claimant in LAR No.477/1999 against the judgment and order dated 12.04.2012 passed by Joint Civil Judge, Senior Division, Latur. In the said LAR. The said Court is hereinafter referred to as the 'Reference Court' and the appellant is hereinafter referred to as the 'Claimant'. The Reference Court has dismissed the LAR on the ground that the claimant did not adduce any evidence in order to substantiate his claim.

2. Shri Rathi, learned counsel submitted that the Reference Court could not have dismissed the claim on this ground that the claimant did not adduce any evidence in order to substantiate his claim. The learned counsel further submitted that the connected reference applications have been decided by the same Court and

the amounts of compensation in all those matters have been enhanced by the said Court. The learned counsel submitted that, the same course could have been followed by the Court in the present matter also. The learned counsel submitted that for the relevant period, the claimant was suffering from severe disease like HIV and was undergoing treatment and in the circumstances, he could not properly attend the LAR filed by him and that is the main reason that he could not adduce evidence to substantiate his claim. The learned counsel, in the circumstances, has prayed to remit the matter to the Reference Court to decide the same afresh.

3. Shri Dande, the learned counsel appearing for respondent no.2 i.e. MIDC submitted that the Tribunal has rightly dismissed the reference application since there was no evidence adduced by the claimant. The learned counsel submitted that even if the reason as is now submitted by the claimant for not adducing the evidence is believed, the burden of the interest shall not be saddled on the respondent for the long period of 13 years during which the Reference Application was pending and if this Court inclines to remit the matter for deciding it afresh, the claimant be disentitled from claiming interest of the intervening period.

4. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned judgment. The Reference Court could not

have dismissed the reference application merely on the ground that no evidence was adduced by the claimant in order to substantiate his claim. The said order, therefore, needs to be set aside and the Reference Court needs to be directed to decide the reference application afresh by giving due opportunity to the claimant to adduce his evidence in order to substantiate his claim. In so far as the submission as has been advanced by Shri Dande, the learned counsel appearing for the acquiring body, Shri Rath, learned counsel appearing for the claimant pointed out that while condoning the delay occurred in filing this appeal this Court has already excluded the period of delay for claiming statutory benefits as well as interest. The learned counsel submitted that the other reference applications filed along with the present reference application were also decided by the said Court in the year 2012. In the circumstances, it may be unjust to deprive the claimant for the interest of the said period.

5. After having considered the submissions so made, it appears to me that the following order would meet the ends of justice. Hence, the following order:

ORDER

[i] The order passed by the Reference Court dated 12.04.2012 in LAR No.477/1999 impugned in the present appeal is set aside.

[ii] The Reference Application is remitted to the Reference Court for deciding it afresh by giving due opportunity to the claimant to adduce the necessary evidence in order to substantiate his claim.

[iii] Needless to state that the respondents will also have equal opportunity to raise objections and also to adduce any positive evidence, if they so desire to support their contentions.

[iv] The appellant-claimant shall not claim the interest of the period of delay for which this Court has disentitled him from claiming the interest while passing the order on his application for condonation of delay.

[v] The copy of the order passed on the application for condonation of delay shall be submitted by the claimant before the Reference Court.

[vi] The First Appeal stands allowed in the aforesaid terms.

[vii] The parties are directed to appear before the Reference Court on 15.02.2019 and no separate notice will be required for their appearance.

**(P.R. BORA)
JUDGE**