

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CIVIL APPLICATION NO.3748 OF 2019
IN FA/2092/2017

HARIRANG SANDU AMBHORE AND OTHERS
VERSUS
THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION NO.1,
AURANGABAD AND ANR

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Advocate for Applicants : Mr. Adkine Sonaji K .
AGP for respondent No.2-State : Mr. R. B. Bagul.
Advocate for Respondent No.1 : Mr. G. B. Rajale.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 18-09-2019.

PER COURT :

1. Present application has been filed for allowing the amount deposited in this Court by acquiring body to be withdrawn and prayer is also made to bring the legal representatives of the deceased applicant No.2 on record by setting aside the abatement.

2. At the outset it is to be noted that, present applicants are the respondents in the first appeal which was already disposed of on 23-01-2018. As per photocopy of the death certificate of original claimant No.2 in LAR No.375 of 2007 namely Sandu Maroti Ambhore expired on 01-04-2012, it appears that the reference Court had decided the matter on 03-05-2013, that means, during the pendency of the

reference claimants itself had not brought the legal heirs of applicant No.2 on record.

3. Further, it appears from the record that, the applicants had filed Civil Application No.2053 of 2018 in First Appeal No.2092 of 2017 and the said application to bring the legal heirs of applicant No.2 on record was allowed by this Court on 16-02-2018. According to the learned advocate for the applicants though the said order was passed, the appellant acquiring body did not carried out the amendment in the appeal, and therefore, it has been carried out as it appears from the memo of the first appeal by the advocate for the respondent i.e. present applicant himself on 15-04-2019 without any order passed by this Court. However the record shows that, all the picture was not clearly painted by the applicants otherwise in the appeal memo which was filed by the acquiring body and the state, the amendment could not have been allowed to be made by the respondent. Another fact that appears to be that, it was not clearly stated when the order was passed by this Court on 16-02-2018 that the First Appeal No.2092 of 2017 was already disposed of on merits on 23-01-2018 and it was also not pointed out to this Court that the present applicants have filed First Appeal No.3308 of 2017 and it is

admitted by this Court. If there would have been the cross appeals, they could have been disposed of by the same Judgment.

4. Under such circumstance, when in this application though already the amendment was carried out, a prayer has been made in Clauses 'B-A' and 'C' which does not arise now. Now the only prayer that can be entertained is 'B' which is in respect of withdrawal of the amount. Though the appeal filed by the present applicants for enhancement is still pending yet when the appeal filed by the acquiring body has been disposed of on merits, there is no hurdle in allowing the applicants to withdraw the said amount which has been deposited in this Court. Accordingly the amount is allowed to be withdrawn.

5. It is clarified that, the amount be distributed as per the wish of the applicants, for which, within a period of two (02) weeks from the date of this order, pursis should be filed by the applicants, as to how they want the distribution of the amount. Accordingly the application is disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-