

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

932. CIVIL APPLICATION NO. 3801 OF 2019
IN
FIRST APPEAL No. 72 of 2015

Muzaffar Mahamood S/o Haji Mahmood Khan	... <u>Applicant.</u>
<u>Versus</u>	
The State of Maharashtra and another	... <u>Respondents</u>

Mr. A. D. Kasliwal, Advocate for applicant
Mr. P.M. Kulkarni, Asstt. Govt. Pleader for Respt. No.1
Mr. S.V. Kurundkar, Advocate for respondent No.2

CORAM : V.L. ACHLIYA, J.

DATE : 4th April, 2019

PER COURT :

1. The applicant-original respondent No.1 has filed this application for permission to withdraw the amount of Rs. 34,87,396/-, out of amount lying deposited with the Court by respondent No.2-acquiring body.
2. Heard learned Counsel for the applicant and respondent No.2 i.e. acquiring body. Perused the judgment and order dated 28th November 2018 passed in First Appeal No. 72 of 2015 as well as affidavit in reply filed by respondent No.2.
3. In brief it is contention of the learned Counsel for the applicant that pursuant to the order passed in Civil Application No.

297 of 2015 dated 14th January 2015 and subsequent order passed in Civil Application No. 3895 of 2015 dated 27th March 2015, respondent No.2 has deposited an amount of Rs. 1,17,62,668/- in this Court. Pending disposal of appeal, the execution of the award passed by the Reference Court was stayed subject to deposit of the amount in terms of award passed by the Reference Court. During the pendency of appeal, the applicant was allowed to withdraw the amount of Rs. 75,00,000/- out of amount of Rs. 1,17,62,668/- deposited by respondent No.2. By the judgment and order dated 28th November 2018 passed in appeal, the award passed by the Reference Court came to be modified and in terms of the modified award, the applicant is entitled to receive further sum of Rs. 34,87,396/-.

4. Respondent No.2 i.e. acquiring body opposed the application by filing affidavit in reply. The respondent No.2 has raised objection as to the calculations made by the applicant and disputed the entitlement of applicant to withdraw the further sum of Rs. 34,87,396/-. In brief it is say of respondent No.2 that the calculations made by the applicant are incorrect. The application is also opposed with contention that respondent No.2 has sent the proposal to challenge the judgment and order dated 28th November 2018 passed by this Court.

5. According to learned Counsel for respondent No.2, the applicant is not entitled for the interest claimed under section 28 of the Land Acquisition Act, 1894 at the rate of 15% per annum for the period 20th April 2015 to 20th February 2019 as the respondent No.2 has deposited the amount in terms of award i.e. Rs. 1,17,62,668/- as per the order passed by the Appellate Court. In view of the deposit of the amount in court, the applicant is not entitled to claim interest under section 28 of the Land Acquisition Act of the period 20th April 2015 to 20th February 2019. The respondent-acquiring body has disputed the amount of Rs. 12,73,373/- claimed as interest of said period. According to the respondent No.2 in terms of the modified award, the applicant is entitled to receive total sum of Rs. 97,14,563/-. Out of which the applicant has already withdrawn Rs. 75,00,000/-. After adjusting the amount withdrawn the applicant is entitled to receive further sum of Rs. 22,14,563/- as against the amount of Rs. 34,87,396/- claimed by the applicant and balance amount to be received back by the respondent-acquiring body.

6. On due consideration of submissions advanced, the dispute between the parties confines to interest at the rate of 15% per annum claimed by the applicant for the period 20th April 2015 to 20th February 2019 i.e. the sum of Rs. 12,73,373/-. Respondent No.2 has not disputed the entitlement of the applicant to receive

further sum of Rs. 22,14,563/- in terms of the award modified by this Court. In view of the controversy between the parties confines to entitlement of the applicant to receive the sum of Rs. 12,73,373/- as interest under section 28 of the L.A. Act, 1894, the applicant can be permitted to withdraw the amount of Rs. 22,14,563/-, the entitlement in respect of which is not disputed by the respondent No.2. So far as the amount which is in dispute can be transferred to the reference court to decide the controversy as to exact amount due and payable to the applicant in terms of the award modified by this Court. Accordingly the following order is passed.

ORDER

- I) The application is partly allowed.
- II) The applicant is allowed to withdraw the amount of Rs. 22,14,563/- (Rs. Twenty two lacs fourteen thousand five hundred sixty three only) on furnishing written undertaking to the satisfaction of the Registrar (Judicial) that in case the judgment and award passed by this Court is set aside or modified, and the applicant is required to redeposit any amount, the applicant shall deposit the same within eight weeks from the date of such order.
- III) The amount of Rs. 12,73,373/- (Rs. Twelve lacs seventy three thousand three hundred seventy three only) i.e. disputed

amount be transferred to the Reference Court for deciding the controversy between the parties.

IV) Respondent No.2 i.e. acquiring body will be at liberty to raise appropriate objection before executing court as to the entitlement of the applicant to claim amount of Rs. 12,73,373/- towards interest. In case such objection is raised, the executing Court is directed to decide same on its own merits and pass appropriate order.

V) After paying the amount of Rs. 22,14,563/- to the applicant and transfer of amount of Rs. 12,73,373/- to the Reference Court, if any amount remains lying deposited with the Court, then same shall be paid to respondent No.2 i.e. acquiring body i.e. the appellant in the case.

VI) It is expressly made clear that this Court has not examined the controversy as to entitlement of the applicant to receive the sum of Rs. 12,73,373/- and all contentions raised by parties are kept open to be raised before the Reference Court.

VII) The application stands disposed of in above terms.

(V.L. ACHLIYA)
JUDGE