

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

CIVIL APPLICATION NO. 4372 OF 2019
IN
FIRST APPEAL NO. 226 OF 2016

Aayodhya w/o Damodar Yemale and others .. Applicants

versus

The Maharashtra Industrial Development
Corporation and others .. Respondents

Mr Sandeep Swami, Advocate for applicants
Mr G. S. Khaire, Advocate holding for Mr S. S. Dande, Advocate
for respondent no. 1
Mr A. V. Deshmukh, Asstt. Govt. Pleader for respondent no. 2
Mr F. K. Patel, Advocate for respondents no. 3

CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.

DATE : 29th March, 2019

ORDER :

1. Heard learned counsel for appearing parties.
2. This is an application by two legal heirs of original claimant Gyanoba Shivba Dandime for withdrawal of amount allowed under order dated 08-07-2016 in civil application bearing no. 8916 of 2016.
3. Civil application no. 8916 of 2016 had been moved by original claimant who was respondent no. 2 in aforesaid first appeal.

4. During pendency of first appeal, original claimant Gyanoba Shivba Dandime died on 06-01-2019. His legal heirs have been brought on record in the first appeal.

5. Legal heirs of original claimant viz; applicants and respondents no. 3A and 3B are *ad-idem* that they succeed to deceased claimant and are entitled to receive compensation amount in proportion to their shares as are settled among them under a compromise in special civil suit bearing no. 63 of 2017 before civil court at Latur while said suit has been disposed of on 13-12-2018 in terms of compromise entered into by and between the parties.

6. Learned counsel are also *ad-idem* that the terms of compromise referred to above are as contained in decree in said suit, a copy of which is annexed to present civil suit.

7. Learned counsel for applicants and respondents no. 3A and 3B submit that the legal heirs of deceased – original claimant i. e. respondent no. 3 in first appeal are entitled to withdraw amount of compensation as per the terms of compromise. It is submitted that the claimant had been allowed to withdraw the amounts in terms of order dated 08-07-2016 in civil application bearing no. 8916 of 2016 referred to above.

8. In view of aforesaid and having regard to submissions advanced which are claimed to be as per terms of compromise,

the applicants are permitted give solvent surety with respect to their share under the compromise in respect of withdrawal of 25 per cent of the amount under clause (ii) of order dated 08-07-2016 in civil application bearing no. 8916 of 2016.

9. Learned counsel for respondents no. 3A and 3B submits that they would also be entitled to and be allowed to withdraw amount as referred to under clause (ii) of order dated 08-07-2016 (supra) to the extent of their share under the compromise, on furnishing solvent surety, obviating a separate application on their behalf for the same.

10. Learned counsel for applicants and other respondents do not have any particular objection to the same.

11. In view of the same, respondents no. 3A and 3B as well would be entitled to withdraw the amount to the extent of their share under compromise by giving solvent surety in respect of amount referred to under clause (ii) of order dated 08-07-2016 referred to hereinbefore.

12. Present civil application is accordingly disposed of.

R. G. AVACHAT,
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-