

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9088 OF 2018

SUBHASH VITTHAL SATHE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Shri Latange V.P.
AGP for Respondent 1 : Shri Munde S.W.
Advocate for Respondent 2 : Shri Rathi Swapnil S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 10, 2019

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PER COURT :-

1. The petitioner / claimant in LAR No.146 of 2011(Old LAR No.30 of 2010) is aggrieved by the order dated 13.2.2015, by which, the plaint is rejected under Order VII Rule 11 of the Civil Procedure Code (CPC) for non-payment of Court fees.
2. I have heard the learned Advocates for the petitioner and respondent No.2 and the learned AGP on behalf of respondent No.1.
3. The record reveals that an application Exhibit 3/D was filed by the petitioner, through his Advocate on 25.7.2012, praying for leave to pay the Court fees after the LAR proceedings are decided. By order dated 25.7.2012, the said application was allowed, thereby granting leave to the claimant to proceed with the LAR proceedings

and he was obliged to pay the court fees after the proceedings are decided.

4. It appears that the counsel representing the petitioner failed to note that Exhibit 3/D was allowed. The hearing in the proceedings commenced. The written statement was also filed by the respondents on 6.11.2012. Issues were cast on 14.1.2013. Thereafter, the claimant and his Advocate remained absent and did not lead oral evidence till 25.9.2014. On the said date, the Court *suo moto* stayed the proceedings on the ground that the claimant had not paid the court fees. It is, therefore, obvious that even the concerned Court lost sight of the fact that application Exhibit 3/D was allowed.

5. I, therefore, find from the record that the proceedings were adjourned after the written statement was filed on 6.11.2012 and since then, the matter was kept lingering till it was finally concluded with the impugned order on 13.2.2015. This petition has been filed on 4.7.2018.

6. In so far as the delayed filing of this petition is concerned, I find that this Court must adopt a pragmatic approach as the issue of compensation on account of the acquisition of land is involved and

the proceedings are with regard to enhancement of compensation under Section 18 of the Land Acquisition Act, 1894. The other claimants, identically placed, succeeded in getting enhancement and the first appeals filed by the Railway Department are now pending before this Court.

7. In view of the above, this petition is partly allowed. By the consent of the parties, the petitioner shall deposit costs of Rs.1,000/- with with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad**”) on/or before 3.5.2019.

8. The impugned order, dated 13.2.2013 stands quashed and set aside. LAR No.146 of 2011 stands restored and the litigating sides would appear before the LAR Court on 30.4.2019. It is made clear that, by virtue of the order dated 25.7.2012 on Exhibit 3/D, the proceedings shall be conducted before the Court. The LAR Court shall not prepare it's award until court fees are deposited by the plaintiff.

9. Since the matter has got adjourned on account of the

claimant from 14.1.2013, after the respondents filed their written statement on 6.11.2012, till this date, the petitioner / claimant shall be deprived of the interest component on the enhanced amount for the period from 14.1.2013 till 10.4.2019.

(RAVINDRA V. GHUGE, J.)

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akl/d