IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11395 OF 2019

SARASWATIBAI SHRIDHAR KAWALE ALIAS SARASWATI SHRIDHAR KAVALE AND ANOTHER
VERSUS
GANGADHAR MANIKRAO FEGADE AND OTHERS
...

Advocate for the Petitioners : Shri P. C. Mayure
Advocate for Respondent No. 3 : Shri S. G. Chapalgaonkar
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th SEPTEMBER, 2019.
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PER COURT :

1. The petitioners, husband and wife, who are both the senior citizens, were the original claimant Nos. 3 and 4 in MACP No. 20/2015. The Tribunal has delivered a final judgment on 28/12/2018. Claimant Nos. 1 and 2, who are the widow and daughter of the deceased Suryabhan Kawale have got their share. The petitioners who are the aged parents of the deceased have been granted Rs. 18,33,546/-, together. By a direction in Clause 3 of the operative part, the Tribunal has ordered that the amount would be invested in a fixed deposit with a bank and these parents would be entitled to receive

monthly interest for their day to day expenditure.

2. It appears to the Court in the peculiar facts of this case that this is not an adversarial litigation and none of the respondents are aggrieved by the quantum of the compensation or the conditions imposed. The learned Advocate for the petitioners submits that the widow and her daughter are formal parties.

3. Since I noticed that Shri Chapalgaonkar learned Advocate appears on behalf of the United India Insurance Company Limited, respondent No.3 herein, I requested him to assist the Court. He submits that the Insurance Company has no grievance *insofar* as the manner in which these petitioners would utilize the said funds. He submits that such claimants can make out a case of necessity so as to withdraw some portion of such compensation.

4. The learned Advocate for the petitioners submits that they have taken certain agricultural loans and have to repay such loans. They live in village Malewadi and agriculture is

the source of their income. Reliance is placed upon the judgment delivered by the Honourable Apex Court in the matter of ***A.V. Padma and others Vs. R. Venugopal and others (2012) AIR SCW 4340***.

5. I find that the Honourable Apex Court has held in paragraph 5 in the matter of *A.V. Padma (supra)*, as under :-

> *"Thus, sufficient discretion has been given to the Tribunal not to insist on investment of the compensation amount in long term fixed deposit and to release even the whole amount in the case of literate persons. However, the Tribunals are often taking a very rigid stand and are mechanically ordering in almost all cases that the amount of compensation shall be invested in long term fixed deposit. They are taking such a rigid and mechanical approach without understanding and appreciating the distinction drawn by this Court in the case of minors, illiterate claimants and widows and in the case of semi-literate and literate persons. It needs to be clarified that the above guidelines were issued by this Court only to safeguard the interests of the claimants, particularly the minors, illiterates and Ors. whose amounts are sought to be withdrawn on some fictitious grounds. The guidelines were not to be understood to mean that the Tribunals*

were to take a rigid stand while considering an application seeking release of the money. The guidelines cast a responsibility on the Tribunals to pass appropriate orders aft er examining each case on its own merits. However, it is seen that even in cases when there is no possibility or chance of the feed being frittered away by the beneficiary owing to ignorance, illiteracy or susceptibility to exploitation, investment of the amount of compensation in long term fixed deposit is directed by the Tribunals as a matter of course and in a routine manner, ignoring the object and the spirit of the guidelines issued by this Court and the genuine requirements of the claimants. Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, the Tribunal thinks it necessary to direct such investment in the larger interests of the claimant and with a view to ensure the safety of the compensation awarded to him. The Tribunals very often dispose of the claimant's application for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardships to the claimants.

The Tribunals appear to think that in view of the

> *guidelines issued by this Court, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the Tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the Tribunals is necessary in the interest of justice.*"

6. The learned Advocate for the petitioners submits that they may be permitted to withdraw an amount of Rs. 9,00,000/- and the remaining amount can be invested in Fixed Deposit Receipt and they would draw the monthly interest for their day to day expenditure. The amount of Rs. 9,00,000/- would be spent towards clearing the agricultural loans and some other loans.

7. In view of the above, I am not issuing notice to respondent Nos. 1, 2, 4 and 5 as they are formal parties.

8. This petition is partly allowed. The direction of the Tribunal at Clause 3 of the impugned order dated 28/12/2018 shall stand modified only to the extent of permitting the

petitioners to withdraw the total amount of Rs. 9,00,000/- and the remaining amount of Rs. 09,33,546/-, would continue to be invested in Fixed Deposit Receipt and these petitioners would be entitled for receiving the monthly interest thereof.

9. The request for modification of Clause 5 of the impugned order stands rejected.

(RAVINDRA V. GHUGE, J.)

shp/-