

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

903 CIVIL APPLICATION NO.14163 OF 2018
IN FIRST APPEAL NO.2558 OF 2009

[MEHBOOB CHANDSAHEB BAGWAN
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER]

WITH
CIVIL APPLICATION NO.14161 OF 2018
IN FIRST APPEAL NO.2552 OF 2009

[MOHAMMAD S/O. CHANDSAHEB BAGWAN
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER]

WITH
CIVIL APPLICATION NO.14160 OF 2018
IN FIRST APPEAL NO.2556 OF 2009

[BABU CHANDSAHEB BAGWAN
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER]

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Mr.Suraj V. Gundre, Advocate for the
applicants in all Civil Applications
Mr.K.D.Mundhe, AGP for the respondent-State.
Mr.S.S.Dande, Advocate for the respondent
no.2 in all Civil Applications.

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**CORAM : V.L.ACHLIYA, J.
DATE : 20.08.2019**

PER COURT:

1] Pursuant to the order dated 2nd
August, 2019 passed, the applicants are

present with their Advocate and tendered individual affidavit, thereby requested to accept unconditional apology for suppression of facts regarding filing of the Petitions for Special Leave to Appeal before the Hon'ble Supreme Court and rejection thereof.

2] The unconditional apology tendered by the applicants is accepted and they are warned from repeating such act in future otherwise same shall be viewed seriously.

3] The applicants—original respondent no.1 in First Appeals have preferred these applications, seeking directions to the appellant-MIDC to deposit remaining 50% amount to be payable in terms of the judgment and order passed by the Reference Court.

4] Heard learned counsel for the applicants—original respondent no.1 and non applicant no.2—original appellant i.e. acquiring body.

5] In brief, it is the contention of the applicants that while admitting these Appeals, the Division Bench of this Court, vide order dated 21st August, 2009 [Coram : B.R.Gavai & N.D.Deshpande, JJ.], granted stay to the effect and operation of the award passed by the Reference Court subject to deposit of 50% of the amount awarded by reference Court within a period of four weeks from the date of passing of the order. By the same order, the Division Bench of this Court granted liberty to applicants—claimants to withdraw 50% of the amount deposited, without surety and remaining 50% on furnishing bank guarantee of Nationalized / Scheduled Bank to the satisfaction of the Registrar [Judicial], on furnishing undertaking to effect that in the final judgment and award if it is found that the amount withdrawn by the respondents – claimants is in excess than the amount to which they are entitled, they would refund

the said amount. It is submitted that pursuant to the said order, the appellant has deposited 50% of the amount awarded and applicants have withdrawn the same. Some of the claimants arising out of the same award in which similar orders were passed moved the Apex Court by way of Special Leave to Appeal seeking direction to appellant – acquiring body to deposit the balance 50% of amount of compensation. By order dated 14.08.2018 passed in the matter of those applicants, the Apex Court has directed the appellant–acquiring body to deposit the remaining 50% amount and further permitted them to withdraw the same. It is submitted that the case of the applicants is identical to those persons and urged to direct non-applicant no.2 i.e. appellant-acquiring body to deposit the remaining 50% amount of compensation together with interest and further allow them to withdraw the amount.

6] Non-applicant no.2 – appellant filed affidavit-in-reply and opposed the applications. It is pointed out that the applicants have filed applications in gross suppression of the fact regarding filing S.L.Ps. before Apex Court against the order dated 21.08.2009 passed by this Court, directing to stay the execution of award on deposit of 50% of the amount. It is pointed out that the Special Leave to Appeals filed by the applicants against said order were rejected by the Apex Court, vide order dated 27th March, 2015. The fact regarding rejection of the Special Leave to Appeals by the Apex Court in the matter of applicants has been suppressed while filing the present applications. In this background, it is contended that once the order passed by this Court granting stay has been upheld by the Apex Court, the applications filed by applicants are not maintainable.

7] I have carefully considered the submissions advanced in the light of the order dated 21.08.2009 passed by Division Bench of this Court as well as the order dated 27.03.2015 passed by the Apex Court in Petitions for Special Leave to Appeals [C] Nos.5051-5058/2015 filed by applicants. Further perused the order dated 14.08.2018 passed in Petitions for Special Leave to Appeal [C] Nos.30844-30851/2017. It is an admitted position that as against the order dated 21.08.2009 passed by the Division Bench of this Court, the applicants have preferred Petitions for Special Leave to Appeal [C] Nos.5051-5058/2015 and the same were dismissed by order dated 27.03.2015 passed by the Apex Court. The fact regarding rejection of the Petitions for Special Leave to Appeal has been suppressed while presenting the present applications. When the fact regarding suppression of the order dated 27.03.2015

brought to notice of this Court, the applicants were directed to appear and file affidavit-in-reply as to suppression of filing of Special Leave to Appeal and the orders passed therein. The applicants have individually filed their affidavit and tendered unconditional apology for not mentioning the fact regarding filing of the Special Leave to Appeal before the Apex Court and the orders passed therein.

8] Learned counsel for the applicants contended that the relief claimed in the Petitions for Special Leave to Appeal [C] Nos.5051-5058/2015 was altogether different than the relief claimed in the present Applications. It is submitted that the Petitions for Special Leave to Appeal were filed, challenging the order to withdraw the balance amount of 50% on furnishing bank guarantee. It is submitted that in the present applications, the applicants have

claimed the directions to direct the acquiring body to deposit the balance 50% amount together with interest.

9] On due consideration of the submissions advanced, I am of the view that the order dated 21.08.2009 passed by the Division Bench of this Court in the matter of the applicants is very specific and the same cannot be modified by this Court. After hearing the appellants and the respondent in Appeals, the Court has stayed the execution on condition to deposit 50% of the amount of award passed by Reference Court. The order dated 21.08.2009 has attained finality. The Special Leave to Appeals filed by applicants against order dated 21.08.2009 dismissed by Hon'ble Apex Court. In that view this Court cannot entertain the applications to reconsider the earlier order dated 21.08.2009 passed by Division Bench. Learned advocate representing appellant-acquiring body pointed

out that in number of applications filed claiming similar relief were heard and rejected by this Court. It is pointed out that by the order dated 27th September, 2013 passed by the Division Bench of this Court [Coram : R.M.Borde & Sunil P. Deshmukh, JJ.] seeking similar reliefs were rejected by reasoned order. The said order challenged by filing Petitions for Special Leave to Appeal [Civil] Nos.1920-1942 of 2014 before Hon'ble Supreme Court and by order dated 03.02.2014, the Hon'ble Apex Court has dismissed those Appeals. It is further pointed out that by another order dated 12.07.2013 passed by the Division Bench of this Court [Coram : R.M.Borde & R.V.Ghuge, JJ.] rejected the applications claiming similar relief. In Special Leave to Appeal [Civil] No. 22235-22236/2013 filed challenging order dated 12.07.2013, the Hon'ble Apex Court, vide order dated 17.01.2014, dismissed those

Special Leave to Appeals. Similarly by order dated 15.10.2010 passed in First Appeal No. 1142 of 2010 with connected Appeals this Court has rejected applications claiming similar relief. The said order challenged by filing the Special Leave to Appeal and Hon'ble Apex Court vide order dated 17.10.2014 passed in Special Leave to Appeal Nos.16489-16499/2014, dismissed those Appeals and confirmed the order passed by this Court. I am therefore not inclined to entertain these Applications. Accordingly, the applications are rejected.

[V.L.ACHLIYA]
JUDGE