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

**CIVIL APPLICATION NO.15090 OF 2018
IN
CIVIL APPLICATION NO.7111 OF 2018
IN
FIRST APPEAL NO.3313 OF 2017**

Vishwanath Bapurao Menkudale,
Age: 85 years, Occu: Nil,
R/o Ahmedpur, Ta. Ahmedpur,
District Latur

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Collector, Osmanabad
2. The Special Land Acquisition
Officer, Purna Project,
Latur
3. The Executive Engineer,
Minor Irrigation Division,
Latur, District Latur

..RESPONDENTS

Mr V. D. Sapkal, Advocate holding for Mr L. C. Patil, Advocate for
applicant;

Mr A. R. Kale, A.G.P. for respondent Nos.1 & 2

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 3rd January, 2019

ORAL ORDER:

Heard learned Counsel appearing on behalf of the applicant and
learned Asstt. Govt. Pleader appearing on behalf of respondent Nos.1 and 2.

None appears for respondent No.3.

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2. By the present application, the applicant prays for recalling and modification of the order of this Court, dated 26th June, 2018.

3. Mr Sapkal, learned Counsel appearing on behalf of the applicant, by inviting our attention to the order of this Court submitted that though the application was vehemently opposed by respondent No.3, this Court, considering the fact situation permitted the applicant to withdraw 25% of the amount deposited in this Court by the appellant. Mr Sapkal, learned Counsel then submitted that the applicant Mr Vishwanath Bapurao Menkudale is a person in his advanced age i.e. of 85 years of age and in the year 2013 itself, has executed a deed of power of attorney in favour of his nephew Mr Dilip Baburao Menkudale. A copy of the document is also placed along with the present application at page 17. He also invited our attention to the medical certificate issued in favour of applicant Vishwanath Bapurao Menkudale by the private medical practitioner and perusal of the said certificate shows that the applicant Vishwanath is unable to carry out his own activities and needs attendant to look after him.

4. Mr Sapkal then submitted that Mr Dilip Baburao Menkudale would submit his personal undertaking to this Court that in case, if the appellant succeeds in the appeal, he would return back the amount withdrawn from

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this Court in favour of applicant Mr Vishwanath Bapurao Menkudale. He then, on instructions, submitted that such undertaking would be filed within a period of two weeks from today. He further submitted that on filing such an undertaking within two weeks, Mr Dilip Baburao Menkudale be permitted to withdraw the amount, in compliance of the order of this Court, dated 26th June, 2018.

5. Though learned Asstt. Govt. Pleader opposes the application, in view of the submissions of the learned Counsel for the applicant and on perusal of the documents placed on record, more particularly the copy of the medical certificate and the copy of power of attorney placed at page 17 of the application, we allow the application in terms of prayer clause (B) and we further direct that on an undertaking submitted to this Court within two weeks by Mr Dilip Baburao Menkudale, the Registry of this Court to permit Mr Dilip Baburao Menkudale to withdraw the amount in compliance of the order of this Court, dated 26th June, 2018.

The application is accordingly disposed of.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

sjk