

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1428 OF 2019

IN

FIRST APPEAL NO.415 OF 2016

**(Shrimant Sakharam Misal Vs. The Executive Engineer,
Minor Irrigation Division, Jalna through GMIDC
Aurangabad and others)**

AND

CIVIL APPLICATION NO.1429 OF 2019

IN

FIRST APPEAL NO.414 OF 2016

**(Latabai Shrimant Misal Vs. The Executive Engineer,
Minor Irrigation Division, Jalna through GMIDC,
Aurangabad and others)**

Mr. Ajeet B. Kale, Advocate for the applicants
Mr. S.C. Arora, Advocate for respondent No.1
Mr. S.P. Deshmukh, A.G.P. for the respondent/State

CORAM : SUNIL K. KOTWAL, J.

DATE : 5nd APRIL, 2019

ORDER :

These applications are filed by the original claimants for modification of the order dated 30th January, 2018, passed by this Court in Civil Application No.1147/2018 and other connected Civil Applications, on the ground that subsequently on 13th October, 2017 and 9th August, 2018, in connected other matters, the Court has allowed withdrawal of 100%

amount subject to certain conditions.

2. Heard learned counsel for the applicants, learned counsel for respondent No.1 and the learned A.G.P. for respondent No.2.

3. Learned counsel for both parties argued certain points on merits of the matter regarding award passed by the Reference Court. It is suffice to say that for deciding these applications for modification of the order passed by this Court, the merits of the appeal cannot be considered as at this preliminary stage, this Court cannot express anything on merits of the matter.

4. The order passed by this Court on 30th January, 2018 shows that this Court allowed withdrawal of the amount of 50% of the compensation, which is deposited by the Acquiring Body in the First Appeal. While passing this order, this Court has assigned specific reasons as to why 50% amount is allowed to be withdrawn. This Court also expressed that the orders passed for withdrawal in connected matters cannot constitute precedence. Now, by filing these applications, the applicants want modification of the order passed by this Court to allow the applicants to withdraw the remaining

50% amount of compensation.

5. it is to be noted that when this Court has allowed withdrawal of 50% amount of compensation, by assigning specific reasons, the same order cannot be modified by filing such application. These applications for modification amounts to filing of applications for review of the order passed on 30th January, 2018. It is suffice to say that under the garb of modification, the review of the order passed by this Court cannot be allowed. In the circumstances, these applications being devoid of merit, are rejected.

[SUNIL K. KOTWAL]
JUDGE

npj/ca1428-1429-2019