

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

**CIVIL APPLICATION NO.14764 OF 2017
IN FAST/38606/2017**

THE EX. ENGINEER, KUKADI LEFT BANK CANAL, SUB
DIVISION, KOLWADI AND ANR
VERSUS
JIJARAM MAHADEO DOKE AND ORS

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Mr. G.B. Rajale, Advocate for the applicants.
Mr.A.G. Talhar, Advocate for Respondent Nos.1
to 3.

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CORAM: V.L. ACHLIYA,J.
DATE : 09.04.2019

ORAL ORDER:

1. The applicants have filed this application for stay to the execution of the judgment and award dated 16th July, 2011 passed by the Reference Court in L.A.R. No.448/2008.

2. Learned counsel appearing for the applicants by referring to the grounds on which the appeal is preferred submits that the applicants have good case to succeed in the appeal. The applicants have already deposited the amount in terms of the award pursuant to the interim order passed by this

Court. The Respondents-claimants have withdrawn the amount of Rs.21,72,742/-, which was deposited in the Executing Court. The applicants have further deposited the amount of Rs.1,14,53,460/- in addition to the amount, which has been withdrawn by the respondents-claimants. In this background, learned counsel appearing for the applicants urged to stay the execution of the judgment and award in order to protect the interest of the applicants.

3. It is submitted that the Reference Court has awarded the interest under Sections 28 and section 34 of the Land Acquisition Act, 1894 from the date of possession, which is contrary to the statutory provisions as well as the law laid down by the Full Bench of this Court in the case of **State of Maharashtra V/s Kailash Shiva Rangari** 2016 (3) Mh.L.J. 457 (F.B.). He submitted that the possession of the land acquired was taken on 9th July, 1997. The award was passed on 9th March, 2005. In the light of the decision rendered by the Full Bench of this Court, the interest awarded for a period of about 9 years is contrary to the law. It is further

submitted that on account of trees, the amount of Rs.13,00,000/- has been awarded, which is not sustainable in the facts and circumstances of the case. In this background learned counsel urged to stay the execution of the award on such terms and conditions as this Court may deem fit and proper.

4. On the other hand, learned counsel appearing for Respondents-claimants submits that there is inordinate delay of 2237 days and the appellants/applicants have no case to succeed in appeal. It is submitted that the respondents - claimants have deprived of compensation of their lands acquired in the year 1997. They are struggling for receiving the fruits of litigation from last more than 20 years. In this background, learned counsel urged to reject the application.

5. Considering the submissions advanced in the light of the challenges raised in the appeal and the fact that the applicants/appellants have deposited the entire amount in terms of the Award, I am of the view that the application deserves to be allowed. Accordingly, the application is

allowed in terms of prayer clause "B". The execution of the award is stayed till the disposal of the application for condonation of delay or pendency of appeal, as the case may be.

6. The respondents-claimants may press for application for withdrawal of the amount, which they have already presented.

7. The application seeking stay to execution of award is disposed of in the above terms.

[V.L. ACHLIYA]
JUDGE

SGA