

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

50 CIVIL APPLICATION NO.2743 OF 2020
IN FAST/19380/2018

SIDRAM NAGAPPA UPASE AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND ORS

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Advocate for Applicants : Mr. M.L. Dharashive
AGP for Respondents: Mr. S.N. Morampalle.

CORAM : K.K. SONAWANE, J.

DATE : 2nd March, 2020.

PER COURT:

Heard learned counsel for the applicant and learned AGP for respondent State of Maharashtra. The applicant has preferred the present application seeking permission to withdraw the entire decretal amount deposited before the learned Executing Court as per the impugned judgment and award passed by the learned Reference Court in LAR No. 713 of 2009. The learned counsel for the applicant submits that the respondent - State of Maharashtra preferred First Appeal Stamp No. 19380 of 2018 accompanied with the application for condonation of delay bearing CA No. 14561 of 2018, Pending the present proceeding, this court under order dated 6.12.2018, in CA No.14562 of 2018 granted stay to the execution and implementation of the impugned award subject to depositing the entire decretal amount in this court within a period of 12 weeks from the date of order. The condition was also imposed that in case of failure to

comply with the order within stipulated period, the interim relief of stay shall stand vacated automatically without further reference to this court. In view of directions issued by this court, the appellant State of Maharashtra deposited the entire decretal amount before the Executing Court instead of depositing the amount in this court. Thereafter, the applicant moved an application before the Executing Court, seeking withdrawal of decretal amount. The learned Executing Court allowed the applicant to withdraw the entire decretal amount deposited on behalf of acquiring body for want of knowledge about the appeal subjudice before this court. But, lateron, the Executing Court came to know about the proceeding pending in this court and, therefore, the learned Executing Court did not allow the applicant to withdraw the amount, and liberty was granted to the applicant to approach to this court for requisite orders.

2] Admittedly, the procedure adopted by the learned Executing Court appears to be just, proper, reasonable and applaudable one. Be that as it may, the applicant appeared before this court and moved the present application seeking permission for withdrawal of the amount deposited before the Executing Court.

3] Having given anxious consideration to the arguments advanced on behalf of both sides, it appears that the learned Reference Court awarded compensation to some extent excessive and on higher side. Therefore, it would be unjust and improper to allow the applicant – original claimant to withdraw the entire decretal amount deposited before the Executing Court in this matter. The issue of determination of market value is already sub-judice before this Court. Therefore, pending the appeal filed by the State of Maharashtra, it would be desirable to allow the applicant claimant to withdraw some portion of the compensation deposited before the

learned Executing Court. Definitely, it would sub-serve the purpose in the interest of justice and also safeguard the interest of the State of Maharashtra, in case of success in the appeal in future. Therefore, the application deserves to be partly allowed.

4] Accordingly, the application stands partly allowed. The applicants are hereby permitted to withdraw 50% of the compensation amount deposited before the learned Reference Court, subject to condition that the applicants shall furnish an undertaking before the concerned officer of the learned Executing/Reference Court, to the effect that in case adverse situation arises after adjudication of the appeal on merit, in favour of appellant State of Maharashtra, the applicants will refund the amount so withdrawn forthwith as per the directions of this Court. The applicants are further permitted to withdraw 25% of the balance compensation amount deposited before the Reference Court on furnishing solvent surety of like amount to the satisfaction of the concerned officer of the Executing Court. Rest of the 25% balance decretal amount deposited on behalf of State of Maharashtra, be invested in Fixed Deposit, in any nationalized bank for a period of two years or till adjudication of appeal on merit. Registry of the concerned Reference/Executing Court to do the needful for disbursement of amount in favour of applicants-claimants as indicated above and file report of compliance in this court at the earliest. Accordingly, application stands disposed of in above terms.

[K.K. SONAWANE]
JUDGE.

Grt/-.