

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

WRIT PETITION NO. 2839 OF 2020

Sambhappa s/o Maharudrappa Warad

Died Through his L.Rs.

1-a] Nishikant s/o Sambhappa Warad and ors. ... Petitioners

Versus

The State of Maharashtra and another ... Respondents

....

Mr. S. V. Warad, Advocate for the petitioners

Mr. Y. G. Gujrati, AGP for respondent No.1

Mr. S. G. Sangle, Advocate for respondent No.2

....

CORAM : R. G. AVACHAT, J.

DATED : 24th FEBRUARY, 2021

PER COURT :-

. Heard.

2. The challenge in this writ petition is to the order dated 23.07.2019, passed below Exh.18 in execution proceedings being Special Darkhast No.65 of 2018. By the impugned order, the petitioners have been permitted to withdraw the amount of Rs.44,70,977/- on furnishing undertaking besides giving bank guarantee or solvent surety in the sum of the amount to be withdrawn.

3. Learned Advocate for the petitioners challenges the order directing the petitioners to furnish bank guarantee or solvent surety. According to him, the First Appeal preferred against the award in L.A.R. proceedings, stood abated long back. As such, there are no proceedings pending to take exception to the award.

4. Learned Advocate for the respondent states that he just got knowledge of the death of the original respondent in the First Appeal. According to him, it was the responsibility of the petitioners to inform the Court about demise of the concerned respondent so that as the appellant could have taken steps to bring on record the legal representatives of the deceased respondent.

5. The record indicates that the respondent in the appeal passed away in the year 2010 itself. He was a sole respondent. As such, on his demise and on account of failure to take legal representatives on record, the appeal stood abated. It has been ten years since the appeal has been abated. The execution proceedings of the award have been initiated way back in 2018. The same indicate the respondent herein to have knowledge of the developments in the appeal and its abatement.

6. As such, as there being no proceeding pending taking exception to the award, the petitioners are entitled to receive the amount there under, unconditionally. The petitioners are the legal representatives of the original respondent - Sambhappa. A copy of heirship certificate granted by the Court in favour of the petitioners is produced across the bar.

7. In view of the above, the writ petition is allowed.

8. The condition imposed by the executing Court, directing the petitioners to furnish bank guarantee or solvent surety is withdrawn. The amount under the award along with interest thereon, be paid to the petitioners on furnishing undertaking to the effect that they would repay the entire amount in the event of any direction in that regard issued by the Court.

[R. G. AVACHAT, J.]

SMS