

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

924 CIVIL APPLICATION NO.6683 OF 2022
IN RC/281/2018 IN FAST/29695/2016

ARJUN ABA KACHARE (DIED)
THR LRS RAJAMATI AND ORS

VERSUS

EXECUTIVE ENGINEER, IRRIGATION
PROJECT STRENGTHENING DIV.,OMERGA AND ORS

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Advocate for Applicants : Mr S.A. Wakure
AGP for Respondent Nos. 2 and 3 : Mr P.M. Kulkarni

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 28th APRIL, 2022

PER COURT :

1. It is an application for withdrawal of compensation amount deposited by the acquiring body in rejected case No 281/2018 in First Appeal St. No. 29695 of 2016.
2. Heard Mr S.A. Wakure, learned counsel for the applicants/claimants and Mr P.M. Kulkarni, learned AGP for the State/respondent Nos. 2 and 3.
3. None present for respondent No.1 when the matter is called out.
4. Mr S.A. Wakure, learned counsel for the applicants/claimants seeks leave to place on record copy of death certificate of original claimant/Arjun Aba Kachare. Leave granted.
5. The copy of death certificate is taken on record and marked as 'X' for identification.

6. It is revealed during the course of argument that respondent No.1/acquiring body has preferred the appeal against the impugned Judgment and award passed by the Reference Court along with the delay condonation application.

7. In the meantime, respondent No.1/claimant died. This Court has directed to the acquiring body to bring on record legal heirs of deceased respondent No.1 and passed the conditional order dated 06.09.2017 with caution that in case the applicant/acquiring body fails to take steps to that effect within a stipulated period, the application shall stand dismissed automatically against the concerned respondent without further reference to the Court.

8. It is further evident from the order dated 06.11.2017 that the applicant/acquiring body has failed to take necessary steps to bring on record legal heirs of deceased respondent No.1, who is only contesting party on record. Since respondent Nos 2 and 3 are formal parties, this Court vide order dated 06.11.2017 was pleased to dismiss the application for condonation of delay being infructuous and nugatory one and consequently first appeal stands disposed of as infructuous. No steps seems to have been taken by the acquiring body to restore the appeal. Under such circumstances, there is no point to retain the amount deposited by the applicant/acquiring body in this Court.

9. In similar circumstances in the matter which is arising out of same project and group, this Court has allowed the claimants to withdraw the entire amount of compensation with accrued interest thereon deposited by the acquiring body in this Court on filing affidavit stating therein that the applicants are the only legal heirs of late claimant and there is no other legal heir.

10. By taking the same view, this application can be disposed of.

ORDER

- (i) The application is hereby allowed.
- (ii) The applicants/claimants are permitted to withdraw entire amount of compensation with accrued interest thereon deposited by the acquiring body in this Court on filing necessary affidavit making it clear that they are only legal heirs of late claimant/Arjun Aba Kachare as well as on furnishing usual undertaking to the Registrar (Judicial) of this Court.
- (iii) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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