

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

912 CIVIL APPLICATION NO.7876 OF 2020
IN FA/850/2005

AHMED MOHAMMAD THR HIS G.P.A SYED
MAZAR S/O AHMED MOHAMMAD

VERSUS

THE SPECIAL LAND ACQUISITION OFFICER
JAYAKWADI PROJECT NO. 2 AND ORS

...

Advocate for Applicant : Mr P.F. Patni
AGP for Respondent/State : Mr S.G. Sangle

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 23rd March, 2022

PER COURT :

1. It is an application for modification of the order passed by the Division Bench of this Court in Civil Application No. 2936/2007 in First Appeal No. 850/2005 dated 22nd April, 2008. The copy of order is placed on record at Exh. R-1 (page No.7).
2. Heard Mr P.F. Patni, learned counsel for the applicant/original claimant and Mr S.G. Sangle, learned AGP for the State.
3. It is revealed during the course of argument that the applicant/original claimant has withdrawn 50% of the amount of compensation along with accrued interest thereon on furnishing undertaking with the Registrar (Judicial) of this Court as per order passed by this Court in Civil Application No. 3923/2017 dated 9th June, 2017.
4. The question is about remaining balance amount of 50% of compensation and interest.

5. Mr Patni, learned counsel for the applicant/claimant invited my attention to the order passed in Civil Application No. 2936/2007 dated 22nd April, 2007 more particularly clause (1) of the order which speaks that the applicant shall furnish a bank guarantee of nationalized bank of the like amount to the satisfaction of Reference Court while withdrawing 50% of amount deposited by the acquiring body. The bank guarantee shall be kept in force during the pendency of the appeal and for a period of six months from the decision of the appeal. The applicant/claimant is ready to furnish necessary solvent surety/security for the 50% amount of compensation which will protect the interest of the State. He further points out the order passed by this Court in Civil Application No. 10806/2016 dated 8th August, 2016 and submitted that in identical matter, this Court has modified the order and allowed the claimant to withdraw 50% of the amount of compensation on furnishing solvent surety instead of bank guarantee. He seeks similar order on the basis of parity.

6. Mr Patni, learned counsel for the applicant submitted that the claimant while furnishing bank guarantee, required to keep amount with the bank and the money is unnecessarily blocked.

7. Mr S.G. Sangle, learned AGP for the State strongly opposed to allow this application. He submitted that after all, it is public money and the interest of public money needs to be protected. He also invited my attention to the order dated 22nd April, 2008 passed in Civil Application No. 2936/2007 and submitted that in view of the peculiar facts of the case, the Division Bench of this Court was pleased to impose such condition while allowing the claimant to withdraw 50% amount of compensation. He therefore, strongly opposed to make any modification in the order passed by the Division Bench of this Court dated 22nd April, 2008.

8. I have considered the submissions of Mr Patni, learned counsel for the applicant and Mr Sangle, learned AGP for the State. I have also perused the above said orders relied upon by Mr Patni, learned counsel for the applicant.

9. At the outset, let me mention that in view of the increase in pecuniary jurisdiction of this Court, the first appeal now lies before this Court. Accordingly, this application with appeal are listed before this Court.

10. It is evident from the record that the Division Bench of this Court was pleased to allow the claimant to withdraw 50% of the amount of compensation. He has withdrawn it by arranging bank guarantee of nationalized bank. However, while furnishing bank guarantee, his money is blocked and he is required to pay interest. In identical matter in Civil Application No. 10806/2016 dated 8th August, 2016, this Court (Coram : P.R. Bora,J.) was pleased to modify the order and allowed the claimant to withdraw 50% of the amount on furnishing solvent surety instead of bank guarantee.

11. I do not see any reason to take any different view. Ultimately, the interest of both the sides needs to be seen. If claimant is directed to furnish solvent surety of the like amount, it would certainly protect interest of the State.

12. Having regard to the above reasons and discussion, I proceed to pass the following order :-

ORDER

(A) The application is hereby allowed in terms of prayer clause (B).

(B) The order is modified as under :-

(i) The applicant/claimant is permitted to furnish solvent surety/security

of the like amount pertaining to 50% of the compensation amount with accrued interest thereon instead of bank guarantee.

- (ii) The claimant shall also furnish undertaking to this Court that in the event, State succeeds in the appeal, he would redeposit the amount in this Court with interest within a period of six weeks from the date of the order.
- (iii) Civil Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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