

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLANT JURISDICTION**

**INTERIM APPLICATION NO. 17129 OF 2022
WITH
INTERIM APPLICATION NO. 1646 OF 2022
IN
INTERIM APPLICATION NO. 1647 OF 2022
IN
SECOND APPEAL NO. 402 OF 1999**

Dipak Baban Gaikwad & Ors. ... Applicants

IN THE MATTER BETWEEN

Gitabai Bapu Shinde & Ors. ... Appellants

vs

Late Anusuyabai w/o. Babanrao Gaikwad
(Since deceased through Lrs) & Ors. ... Respondents

Mr. Sushant S. Prabhune for the applicants in all IAs and for
respondent no. 1 in SA

Shri Ajay A. Joshi for the appellants

Mr. Prathamesh Sawant i/b. Adv. Mandar Limaye for the respondent
no. 2 in SA

CORAM : NITIN W. SAMBRE, J.

DATED : 18th NOVEMBER, 2022

P.C.:

IA/17129/2022

1. The Second Appeal is directed against the judgment of the First Appellate Court whereby the claim of the respondents for partition was decreed.

2. During the pendency of the Second Appeal, the part of the suit property was subjected to acquisition and the appellant nos. 2(E), 3 & 4 have *inter se* got a consent order in their favour thereby adjusting the amount of acquisition received and deposited before

the District Court.

3. In the aforesaid background, considering the fact that the present applicants/respondents to the second appeal is already held to be shareholders in the suit property and non-applicants/original appellants in the Second Appeal are enjoying the interim relief, this Court can make such interim relief subject to the condition pursuant to the provisions of order XLI rule 5 of the CPC.

4. In this background, this Court is inclined to allow the application thereby directing the appellant nos. 2(E), 3 & 4 to furnish bank guarantee for an amount of compensation receivable by the applicants/respondents to the second appeal.

5. In view of above, it is directed to furnish the bank guarantee in terms of prayer clause (a) within a period of eight weeks from today.

6. The application stands allowed in above terms.

IA/1646/2022

7. In view of order passed in IA/17129/2022, the application is not pressed and stands disposed of.

IA/1647/2022

8. The interim application stands disposed of with a liberty to mention the matter in March, 2023 for final hearing.

(NITIN W. SAMBRE, J.)