

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

WRIT PETITION 6126 OF 2022

Laila Gafur Shaikh ... Petitioner

V/s.

Mehboob Babu Shaikh & Ors. ... Respondents

Ms. Manisha Devkar for Petitioner.

Mr. Bhalchandra S. Shinde for the Respondents.

CORAM : ROHIT B. DEO, J.

DATE : 20th JUNE 2022

P.C.

1. The petitioner is one of the plaintiff in Regular Civil Suit 222 of 2003 which is brought for partition and separate possession.

2. During the pendency of the suit, part of the property was acquired. The bone of contention is now whether the defendant 5 – respondent 1 in the present petition, is entitled to withdraw the entire amount of compensation. While the learned Trial Judge held in favour of the plaintiff to the extent that defendant 5 was permitted to withdraw the entire amount subject to the condition that the share of the plaintiff shall be deposited in the Court, the Appellate Court has

permitted the defendant 5 to withdraw the entire amount without such condition on the premise that *prima facie* there is a Relinquishment Deed executed by the plaintiff and that if the partition suit is ultimately allowed, the rights can still be worked out after ascertainment of the share.

3. In response to a query, the learned counsel for the defendant 5, on the basis of instructions received from defendant 5 who is present in the Court states that in so far as share of Smt. Laila Gafur Shaikh is concerned, the defendant 5 is ready to give bank guarantee to the extent of her share in support of the undertaking that if the adjudication goes against the defendant 5 and the petitioner Smt. Laila Gafur Shaikh is entitled to share of compensation, the same shall be immediately given to her. In view of fair undertaking to furnish bank guarantee, the order impugned is modified to the extent of the share claimed by the petitioner Smt. Laila Gafur Shaikh and it is directed that in so far as her share is concerned, the amount shall be withdrawn by defendant 5 subject to furnishing bank guarantee restricted to the share of the petitioner Lila Gafur Shaikh.

4. The rest of the order impugned is confirmed.

5. The petition is disposed of.

(ROHIT B. DEO, J.)