

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.15953 OF 2022
IN
WRIT PETITION NO.3800 OF 2022

Dhrupadabai Dhansing Rathod
and others

.... Applicants

Versus

Kisan Poma Rathod
and others

.... Respondents

.....

Mr. Ravindra V. Gore, Advocate for the Applicants
Mr. N.K. Choudhari, Advocate for Respondent No.1
Mr. A.D. Sonkawade, Advocate for Respondent Nos.2 and 3
Mr. R.D. Bagul, AGP for Respondent Nos.5 and 6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st APRIL, 2023

ORDER :

1. This application is filed for withdrawal of the amount deposited by respondent No.1 in this Court pursuant to the order dated 23/03/2022.

2. The applicant is original respondent No.1 in the writ petition filed by respondent No.1 challenging the recovery proceedings Misc. WCA No.13 of 2019, and order dated 29/01/2022 passed below Exhibit-9 in MA WCA No.17 of 2020.

3. Heard the learned advocate for the applicant, learned advocate for respondent No.1, learned advocate for respondent Nos.2 and 3 and the learned AGP for respondent Nos. 5 and 6. Perused the application, affidavit in reply filed by respondent No.1, and affidavit in reply filed by respondent Nos. 2 in writ petition.

4. *Prima facie*, it appears from the record that the Workmen's compensation application bearing W.C. No.2 of 2010, filed by respondent Nos.2, 3 and 4. The said application was allowed *ex parte*, and direction was given to respondent No.1 to pay an amount of Rs.3,27,705/- towards compensation. Respondent No.1 challenged the said *ex parte* order by filing Misc. Application No.37 of 2015. During the pendency of the said application, on 12/11/2016, the parties arrived at settlement and in pursuance of the same, respondent No.1 claims to have paid an amount of Rs.3,27,705/- to the applicant and respondent Nos.2 to 4. Accordingly, the said settlement was recorded in National *Lok Adalat*, and award was passed for Rs.3,27,705/- on the basis of consent terms arrived at between the parties.

5. In spite of settlement of the said dispute before the *Lok Adalat*, the applicant filed Misc. W.S. (Recovery) No. 13 of 2019 for issuance of recovery certificate for the sum of Rs.7,32,505/- along with future interest, by not disclosing the fact that the matter was settled before the *Lok Adalat*, and award dated 12/11/2016 is passed.

6. Even the proceedings of Misc. W.C. (Recovery) No. 13 of 2019 were conducted *ex parte*, and were allowed by order dated 15/01/2020. Recovery Certificate for sum of Rs.3,27,705/- along with interest @ 12% p.a. is awarded. The same is challenged by respondent No.1 by filing W.C. Misc. Application No.17 of 2020 praying for setting aside the said order. Application Exhibit C-16 is filed in W.C. Misc. Application No.17 of 2020 for stay to the impugned award. By order dated 29/01/2022 passed on Exhibit-9, the learned Trial Judge rejected W.C. Misc. Application No.17 of 2020, observing that for want of power of review or recall, it would not be proper to call back the recovery certificate issued on 15/01/2020. Hence, respondent No.1 has filed the present writ petition, and at the time of issuance of notice, this Court has directed to deposit an amount of Rs.2,50,000/-.

7. Taking into consideration rival submissions, and the affidavit in reply filed by the respective parties, and the serious dispute raised by the parties, in my opinion, the application cannot be entertained at this stage and it is liable to be dismissed, same is accordingly dismissed..

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane