

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

**903 CIVIL APPLICATION NO.15147 OF 2019
IN FA/4309/2016 WITH CA/15155/2019 IN FA/4309/2016**

**PRABHAKAR WAMANRAO DESHPANDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

Mr. R. R. Adgaonkar, Advocate for the applicants
Mr. B. R. Surwase, Advocate for respondent Nos. 2 and 3
Mr. S. B. Pulkundwar, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 29th SEPTEMBER, 2023

P. C.

1. Heard the parties.
2. This court by order dated 02-05-2016 passed in Civil Application No.4825/2016 in FAST/1356/2016 directed the appellant acquiring body to deposit an amount as per award. The present applicant thereafter preferred an application seeking withdrawal of said amount. This court by way of order dated 23-06-2017 in Civil Application No. 7287/2017 allowed the claimants to withdraw 50% of the deposited amount by

giving undertaking that in the event any adverse order is passed against the claimants, they will re-deposit the said amount within four months of passing of such order. Remaining 50% balance amount was directed to be invested in fixed deposit in any nationalized bank.

3. The claimants approached the Hon'ble Apex Court to the extent of not allowing to withdraw remaining 50% of the amount. The Hon'ble Apex Court by order dated 18-02-2019 passed in Civil Appeal No. 1733/2019 was pleased to direct to release the remaining 50% of the amount on furnishing security to the satisfaction of the learned reference court. The order is as below:

“Leave granted.

In view of the order dated 11th September, 2015 passed in Civil Appeal No. 7070-7071 of 2015, this appeal is also disposed of by directing that 50% of the enhanced compensation granted to the appellants shall be released without security whereas balance of 50% shall be released to them on furnishing security to the satisfaction of the Reference Court.

The order of the High Court is set aside and the appeal is allowed.”

4. In view of the order passed by the Hon'ble Apex Court the claimants furnished bank guarantee of Co-operative Bank before the learned reference court. However, by order dated 04-10-2019 refused to accept the bank guarantee of Co-operative Bank and rejected the application.

5. The applicants have filed this application seeking permission to withdraw the amount by accepting any other security as directed by the Hon'ble Apex Court.

6. From the order passed by the Hon'ble Apex Court dated 18-02-2019 it is seen that the Hon'ble Apex Court had directed only to furnish security.

5. This court feels that it was not proper on the part of the learned reference court still to insist upon bank guarantee.

6. Learned advocate Mr. Surwase opposes the application submitting that the bank guarantee should be of some nationalized bank or at least scheduled bank. Looking to the amount it is necessary to take care of interest of the

acquiring body and opposes the application.

7. Looking to the facts and the submissions and the order passed by the Hon'ble Apex Court this court finds that insistence of a bank guarantee is not proper. The application is, therefore, allowed.

8. The learned reference court shall not insist for bank guarantee and pass appropriate order.

9. Since the amount is lying in this court, it would be proper to remit the amount to the learned reference court so that parties need not come to this court.

10. Needless to say that reference court shall release the amount on furnishing security.

[KISHORE C. SANT, J.]

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