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

**908 CIVIL APPLICATION NO. 3742 OF 2024
IN FA/127/2021**

**NIMBADAS S/O PANDURANG MAKWAN (PATIL) AND OTHERS
....Applicant**

VERSUS

**THE EXECUTIVE ENGINEER, HATNUR PRO. DIV. CHOPDA NOW
OFFICE AT, LOWER TAPI PRO. DIV. AMALNER
.....Respondent**

Mr. A. B. Kale, Advocate for the applicants
Mr. Subhash Chillarge, Advocate for respondent No.1

CORAM : KISHORE C. SANT, J.

DATE : 14th JUNE, 2024

P. C.

1. Heard the learned advocates for the parties.
2. This application is moved for modification of condition of furnishing bank guarantee for withdrawal of the amount as imposed by this court by order dated 29-11-2022. By the said order this court allowed the applicant to withdraw the amount of Rs.29,87,815/- alongwith accrued interest on furnishing usual undertaking before the learned Registrar

(Judicial) of this court. Another amount of Rs.50 lakhs was permitted to be withdrawn on furnishing bank guarantee of any nationalized bank to that effect which is to be continued till final disposal of the appeal. Remaining amount was directed to be invested in FDR in any nationalized bank.

3. The applicant moved this court for modification of condition of furnishing of the bank guarantee. This was moved in view of the fact that for furnishing bank guarantee of Rs.50 lakhs he was required to deposit an amount of Rs.50 lakhs in a fixed deposit with the bank. This court, however, by order dated 20-01-2023 declined to modify the order noting that there was a dispute about existence of fruit bearing trees. The applicant thereafter moved the Hon'ble Apex Court. The Hon'ble Apex Court by order dated 07-03-2024 was pleased to note the fact that for furnishing bank guarantee of Rs.50 lakhs the applicant is required to keep the equal amount in a fixed deposit. The Hon'ble Apex Court therefore, directed this court to re-consider the direction No.II requiring furnishing of bank guarantee. The

applicant was also absolved from the binding nature of the statement made by the counsel that he is ready to furnish the bank guarantee. In the above mentioned backdrop the applicant has approached this court by filing this application.

4. Looking to the order passed by the Hon'ble Apex Court, it is clearly seen that the order requiring to furnish bank guarantee needs to be modified. However, at the same time, it is required to be kept in mind that the interest of the acquiring body is protected while allowing the applicant to withdraw the amount. The learned advocate for the applicant, therefore, points out to this court Order 25 Rule 1 of the Code of Civil Procedure which provides that amount can be secured by furnishing security for the payment of cost. Though said order it is in respect of the security for cost from the plaintiff, this court feels that same principle can be applied while allowing the applicant to withdraw the amount.

5. Learned advocate for the respondent has vehemently

opposed the application by submitting that this court in the order dated 20-01-2023 has refused to modify the condition taking into consideration that there is a dispute about existence of fruits bearing trees.

6. This court feels that when the application is only for modification of the condition, this court need not go into the merits of the matter. The question before this court for the present is only how to secure the amount directed to be withdrawn. This court, thus, finds that sufficient care of the interest of the respondent-acquiring body can be taken by directing the applicant to furnish solvent surety for withdrawal of the amount of Rs.50 lakhs. Hence, the following order:-

ORDER

a] The applicant shall be allowed to withdraw the amount of Rs.50 lakhs out of amount deposited in this court by the acquiring body with accrued interest thereon on furnishing solvent surety to the satisfaction of the learned Registrar (Judicial) of this court.

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b] The application stands disposed off in above terms.

[KISHORE C. SANT, J.]

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