



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**CIVIL APPLICATION (CAF) NO.1968 OF 2024 AND
CIVIL APPLICATION (CAF) NO.1967 OF 2024 IN
FIRST APPEAL (ST) NO.7646 OF 2024**

**THE EXECUTIVE ENGINEER, MAHA. STATE ROAD DEVELOPMENT CORPORATION (RING
ROAD PROJECT), NAGPUR**

VS

PRAKASH S/O WAMAN SHETE AND OTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.D. Mohgaonkar, Advocate, along with Mr. D.A. Mohagaonkar,
Advocate for the applicant/s
Mr. H.D. Futane, AGP for the non-applicant No.2/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 26.07.2024.

1. The Civil Application (CAF) No.1967 Of 2024 has been filed for condoning the delay in filling the first appeal. The applicant is the original non-applicant No.2 in the reference proceeding before the learned Civil Judge Senior Division, Nagpur.

2. We have heard the learned Advocate for the applicant. He submits that the present applicant is a separate Corporation established under the Act and the Government Pleader or the Assistant Government Pleader attached to the District Court, was not the authority to represent the non-applicant No.2 before the reference Court.

3. In the reference proceeding, the notice was not given to the non-applicant No.2 and surprisingly the Assistant Government Pleader waived notice for the non-applicant No.2. Even the written statement has been filed on behalf of the non-applicant No.2 which appears to be by Sub-Divisional Engineer, P.W. Sub-Division, Katol. The said employee is not the employee of the Corporation i.e. the present applicant. The Corporation never authorized him to file the written statement on behalf of the present applicant before the Reference Court. Thereafter, pursis came to be filed on behalf of the present non-applicant No.2 as well as the present applicant that they do not want to lead any evidence. Further no arguments were advanced and even the order was passed below Exh.1 and then, the judgment has been pronounced.

4. The present applicant came to know about the decision when the Bailiff came for execution. He relies on the decision in *Abdul Rasak and others vs Kerala Water Authority and others* 2002 (3) SCC 228, wherein it has been observed that “it may be said to have succeeded to the liability incurred by the State Government so far as the quantum of compensation awarded by the Collector is concerned but so far as the enhancement in the quantum of compensation is concerned, it will be a liability of the K.W.A. incurred by it after its coming into existence and, therefore, to the extent of enhancement, the Authority was certainly entitled to notice and right to participate in the proceedings before the reference court leading to enhancement of compensation”.

5. When there was no notice to the non-applicant No.2 in that proceeding and the representation was unauthorized, the judgment and award is not binding on the present applicant. He therefore, prays for condonation of delay and grant of interim relief i.e. stay to the execution of the judgment and award passed by the learned Reference Court, for which a separate application i.e. Civil Application (CAF) No.1968 of 2024 has been filed.

6. In the normal course, when it is a money decree, this Court will not interfere to the extent of stay but here it appears to be an exceptional circumstance, as it appears from the record that the applicant is a Corporation and certainly it is a separate entity from the Government and therefore, the Government Pleader or Assistant Government Pleader cannot represent the applicant as of right.

7. Further as stated, it appears that the written statement was filed by the employee of the State Government and not that of the Corporation and therefore, while issuing notice in respect of the condonation of delay application, to the non-applicants, we are also considering the application for stay, under Order 41 Rule 5 of the Code of Civil Procedure at the interim stage.

8. Issue notice to the non-applicants.

9. The learned AGP waives service of notice for the non-applicant No.2 and seeks accommodation to take instructions. Notice to non-applicant No.1 is made returnable on **26.08.2024**.

10. The learned Advocate for the applicant makes a statement that the amount which was granted by the acquisition authority, has already been deposited. However, taking into consideration the award, which has been now passed though as aforesaid money decree cannot be stayed, yet it is stayed till the next date, upon deposit of an amount of Rs.25 Lakhs in this Court on or before 22.08.2024.

11. An authenticated copy of this order be given to the parties.

12. It is informed that the execution proceedings are proceeded today before the Executing Court. Till further orders, we stay the execution proceedings.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]