IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 CIVIL APPLICATION NO. 4545 OF 2025
IN FA/1543/2016

VIMLABAI @ KAMALBAI VASANTRAO ITKAR
VERSUS
THE DEPUTY CHIEF ENGINEER (CONSTRUCTION) C.R. PUNE DIVISION PUNE

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Advocate for Applicant : Mr. Manale Satish S.
AGP for Respondent/s-State : Mr. K.K.Naik.
Advocate for Respondent No.1 : Mr. Manish N. Navandar.
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CORAM : SHAILESH P. BRAHME, J.
DATE : 02.05.2025

PER COURT :-

1. Heard both sides.

2. This application is for modification of order dated 20.07.2017 passed in Civil Application No.9526 of 2017 to dispense with the condition of receiving 25% of the amount deposited in Court by furnishing bank guarantee.

3. First appeal is preferred by respondent No.1/acquiring body challenging judgment and award passed by the Reference Court. While granting stay to the operation of judgment and award of the Reference Court, amount was deposited by the acquiring body. It was sought to be withdrawn by applicant by

making application No.9256 of 2017. By order dated 20.07.2017, applicant was permitted to withdraw 50% of the amount by furnishing bank guarantee to the extent of 25% and on furnishing undertaking for 25%. Accordingly, the applicant furnished bank guarantee as well as undertaking for receiving 50% of the amount.

4. Learned counsel Mr. Satish Manale for the applicant submits that his client is unable to afford the expenses and charges for keeping the bank guarantee intact. Considering the circumstances stated in paragraph Nos.2 and 3 of the application, it is submitted that the condition of bank guarantee be dispensed with. His client is ready to furnish solvency to the extent of 25%. It is submitted that it is very difficult for the applicant to keep the bank guarantee enforceable.

5. Per contra, Mr. Navandar, learned counsel for respondent No.1 would vehemently oppose the prayers and the submissions of the learned counsel for the applicant. He would submit that the compensation granted by the Reference Court is not only exorbitant but arbitrary also. It was impermissible to grant/fix the rate at Rs.40/- per Sq.Ft. If the applicant is permitted to receive 25% of the amount by furnishing the

solvency, it would be very difficult to recover the amount. Respondent has every hope of success in the first appeal. He would advert my attention to order dated 20.02.2018 passed in Civil Application No.1022 of 2018 to buttress that similar type of application was directed to be heard along with first appeal instead of granting any relief. In such a scenario, it is contended that he is ready to go on with hearing of first appeal on merits.

6. I have considered rival submissions of the parties. There is no dispute that applicant was permitted to withdraw amount as per order dated 20.07.2017 passed in civil application No.9526 of 2017. Accordingly, the applicant received 25% by furnishing undertaking and 25% of the amount on furnishing bank guarantee. The averments of paragraph Nos.2 and 3 of the application that applicant is unable to afford the expenses to keep the bank guarantee intact or enforceable cannot be discarded. For retaining the bank guarantee, the applicant is required to invest the amount in fixed deposit is the practical position. Earlier application of applicant for similar relief was directed to be heard along with first appeal. Considering the year of the registration of the appeal, this Court is not in position to hear the first appeal in the immediate future.

7. The respondent's contentions on merits of the appeal cannot be considered at this stage of the proceeding. Respondent might be having good case on merits. Simultaneously, the interest of the party who is deprived of the property has to be balanced. Already applicant is permitted to withdraw 50% of the amount. Out of that the condition of bank guarantee needs to be dispensed with. I am of the considered view that no great prejudice would be caused to the respondents.

8. Civil application is allowed partly.

9. Order passed on 20.07.2017 in civil application No.9526 of 2017 shall stand modify to the extent that applicant is permitted to receive 25% by furnishing solvency instead of bank guarantee. Applicant shall take steps to furnish the solvency and the bank guarantee which was already furnished stands discharged.

(SHAILESH P. BRAHME, J.)

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vmk/-