



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10144 OF 2024

Yallappa Amogsiddha Dhangar ...Petitioner

Versus

The State of Maharashtra and Ors. ...Respondents

Mr Hrishikesh S Shinde, for the Petitioner.

Ms M S Bane, AGP, for the Respondent-State.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 10 January 2025

PC:-

1. Not on board. Upon mentioning taken on board.
2. Heard learned counsel Mr Shinde for the petitioner and learned AGP for respondents 1 and 2.
3. Mr Shinde states that respondents 3 and 4 are served and even an affidavit of service has been filed.
4. The petitioner challenges the order of the competent authority dated 13 June 2024 apportioning the compensation between the petitioner and his wife, i.e. 4th respondent herein. In fact, the order dated 13 June 2024 directs that the compensation should be jointly received and deposited in a joint bank account of the petitioner and the 4th respondent.

5. Mr Shinde relies on **Vinod Kumar vs. District Magistrate**¹ to submit that the Principal Civil Court has jurisdiction over the resolution of the dispute regarding apportionment. He accordingly submits that the competent authority should have simply ordered a reference under Section 3H(4) of the National Highways Act and deposited the compensation amount with the Principal Civil Court, i.e., the concerned District Court.

6. While we agree with Mr Shinde's contention, certain peculiar factors must be considered, particularly when exercising our extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

7. The 4th respondent, who is the petitioner's wife, has alleged that the petitioner is frittering away the amounts by consuming alcohol. Such a complaint was solemnly made before the competent authority, and after appreciating the facts, the competent authority made the impugned order. The competent authority has recorded that if the entire compensation is paid to the petitioner or deposited with the Principal Civil Court, then the survival of the 4th respondent would be rendered difficult. Therefore, in the peculiar facts of this case, the competent authority had made the impugned order directing that the amounts should be jointly accepted by the petitioner and the 4th respondent and directed the deposit of this amount in a joint bank account of the petitioner and the 4th respondent. Still, the petitioner seems to be aggrieved by this order.

¹ AIR 2023 SC 3337

8. This Court's extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India is to be exercised to promote justice. This jurisdiction should not be exercised merely because the petitioner may have made some legal point. If justice is a byproduct of even an erroneous construction of the legal provisions, this Court exercising jurisdiction under Article 226 is not expected to erase or nullify such justice to uphold the point made. In this case, therefore, assuming without accepting that there may be some merit in Mr Shinde's contention, applying the doctrine of substantial justice and being conscious of the nature of the jurisdiction under Article 226 of the Constitution of India, we are not inclined to grant the petitioner the relief that he seeks.

9. Instead, the interest of justice will be met if out of the total compensation of Rs.24,91,414/-, an amount of Rs.5,00,000/- is ordered to be released immediately to the 4th respondent exclusively. The rest of the amount is ordered to be deposited before the Principal Civil Court so that the Principal Civil Court, on a reference by the competent authority, can make appropriate orders regarding the apportionment of this amount. The award of Rs.5,00,000/- to the 4th respondent shall also abide by the orders that the Principal Civil Court shall make in this reference.

10. Mr Shinde, learned counsel for the petitioner, requests that Rs.5,00,000/- be paid to the petitioner.

11. Considering the circumstances of this case, we are unable to accede to this prayer. Granting the petitioner any portion of the compensation at this stage would not be appropriate. The petitioner has not even bothered to make

any positive statement about the fourth respondent's allegation. Only in ground (O) is there a vague statement of denial. The verification of the petition is also not in accordance with the law.

12. Accordingly, we dispose of this petition by making the following order: -

- (a) The competent authority, i.e. the 2nd respondent, must, within 2 months from today, refer the dispute of apportionment between the petitioner and his wife/4th respondent to the concerned Principal Civil Court.
- (b) Along with the reference, the competent authority, i.e. the 2nd respondent, must forward the amount of Rs.19,91,414/- together with the interest, if any, that shall have accrued on the said amount, to the account of the Principal Civil Court within this period of 2 months.
- (c) The competent authority, the 2nd respondent, must pay the balance of Rs.5,00,000/—to the 4th respondent within a month from today, ensuring that this amount is paid exclusively to the 4th respondent.
- (d) The Principal Civil Court must dispose of the reference in accordance with the law after considering all the facts and circumstances that the parties may present.
- (e) The competent authority must file a compliance report in this Court by 15 March 2025.

13. The petition is disposed of in the above terms without any orders for cost.

14. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)