

ORDER BELOW EXH.73 IN REG.DARKHAST NO.8/2003.

1. Perused the application and say Exh.76. Heard both parties.

2. The decree holder is seeking amendment in the execution petition. According to decree holder, as per the order passed in Civil Application No.3001/2005 in First Appeal No.1054/2003 in Hon'ble Bombay Court he is making amendment in the petition in respect of the amount of interest to be recovered from the respondent. As the said amount is not paid by the respondent, the petitioners constrained to make amendment in petition. According to petitioner, the amendment is formal one and no prejudice would be caused to the respondent.

3. Application is objected on the ground that there is no proper reason for making amendment. The prayer of petitioner in respect of advocate fee and cost of the execution petition is not correct. As per the earlier amendment carried by the petitioner, the respondent made the demand of money to the acquiring body and deposited said amount in court on 8-8-2006. The petitioner is again seeking amendment in respect of amount of interest and advocate fee and the cost of execution petition which was not made by the earlier amendment application. The respondent lastly submitted to dismiss the application.

4. At the outset it is to be noted that whatever objection raised by the respondent is in respect of merit of the proposed amended portion *i.e.* amount calculated by the petitioner and sought to be amended in the execution petition. The entitlement of the petitioner to recover the said amount inserted by amendment will be considered latter on and not at the stage of deciding amendment application. In series of judgments the Hon'ble High Court observed that the merit of the amendment need not be considered at the time of deciding application for

amendment. Whether the petitioners are entitled to recover the amount inserted by making amendment by the proposed amendment will be considered at the proper stage. At this stage it is to be considered as to whether by the proposed amendment any prejudice would be caused to the respondent-State or whether the amendment would change the nature of the petition.

5. In this case, the amendment is sought in respect of making calculations of the amount of interest, advocate fee and the cost of execution. If the amendment is allowed, no prejudice would be caused to the respondent. The entitlement of petitioner to recover the said amount from the respondent will be considered at the appropriate stage. At this stage by the proposed amendment no prejudice would be caused to the respondent.

6. It is submitted on behalf of the respondent that the Hon'ble High Court stayed the execution and therefore the amendment can not be allowed. After perusal of the order passed in Civil Application No.2560/2003 in I Appeal No.1054/2003 dated 23-7-2003 it appears that the operation & implementation of the judgment & award in Land Reference is stayed. That stay is also on certain conditions of making payment in court. Therefore the proceeding of the execution petition is not stayed and therefore there is no bar in considering or deciding the application for amendment.

7. As I discussed above, the merit of the amendment can not be considered at this stage. The amendment appears formal one and that too, relating to the calculations of the amount of interest and the advocate fee and cost of execution petition. Therefore the amendment needs to be allowed. Hence order.

O R D E R

- i. Application is allowed.
- ii. The petitioner to carry out amendment within stipulated period of 14 days.

Karad.

Dated: 28-4-2008.

(V.P.AVHAD)
Civil Judge, Senior Division,
Karad.