

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5008 OF 2015

Sarvoday Shikshan Mandal, Chandrapur, Thr. its Secretary, Thr. Constituted Attorney Rakesh
Shahabhai Patel.

-vs-

Maharashtra Jeevan Pradhikaran, Chandrapur, Thr. Its Executive Engineer.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. P. Khajanchi, Advocate for petitioner.
Shri B. D. Pandit, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : December 18, 2015

P.C.

Rule. Heard finally with consent of learned counsel for the parties.

The petitioner/decreed-holder is aggrieved by the order passed below Exhibit-36 by the Executing Court rejecting his application for issuing warrant of attachment.

An award passed by the Reference Court in proceedings under the Land Acquisition Act, 1894 is the subject matter of appeal at the instance of respondent herein. In said appeal, while staying the execution of the impugned award, the respondent was directed to deposit the entire amount under the award with the Reference Court. The respondent deposited sum of Rs.69,65,655/- which according to the petitioner was not the entire amount under the award. The Executing

Court on 12/01/2015 directed parties to place on record the respective calculations pursuant to which the petitioner submitted its calculations. The respondent however did not file any affidavit in that regard. The petitioner thereafter moved an application for issuance of warrant of attachment on the ground the entire amount had not been deposited. This application was rejected by the Trial Court on the ground that there was a stay granted in the first appeal.

Having heard the respective counsel for the parties and having perused the documents filed on record, it can be seen that there is dispute between the parties with regard to the quantum of the entire amount that was required to be deposited. The order passed by the Trial Court below Exhibit-30 directing the parties to file affidavit was complied with only by the petitioner. The executing Court was not justified in refusing to adjudicate the dispute with regard to the actual amount required to be deposited by the respondent. The order dated 11/08/2015 passed below Exhibit-36 having been passed without considering this aspect is therefore, liable to be set aside.

With a view to resolve said dispute, the respondent is directed to file its affidavit in terms of order passed below Exhibit-30 within period of eight weeks from today. After such affidavit is filed, it is open for the petitioner to take further steps in case it is of the view that the conditions on which the execution of the award was stayed have not been complied with.

Accordingly, the following order is passed :

Order dated 11/08/2015 passed below Exhibit-36 by the Executing Court is set aside.

The respondent shall file affidavit giving out its calculations in terms of order passed below Exhibit-30. It is open for the decree-holder to take further steps in the matter if the contingency arises. Needless to mention that in terms of order passed below Exhibit-30, the Executing Court shall after hearing both the sides, adjudicate whether the conditions on which the stay has been granted in F.A. No.296 of 2012 have been complied with. Rule accordingly. No costs.

JUDGE