

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6477 OF 2015

M/s. S.D. Shinde and Company Ahmednagar through its GPA Annasaheb Shripati Shinde	...	Petitioner
Vs.		
The State of Maharashtra, Irrigation Department, Nanded & anr.	...	Respondents

WITH
WRIT PETITION NO. 8923 OF 2015

Executive Engineer, Upper Penganga Project Division No.8	...	Petitioner
Vs.		
M/s. S.D. Shinde and Company Ahmednagar through its GPA Annasaheb Shripati Shinde	...	Respondent

Mr. B.R. Surwase, Advocate for petitioner in wp/8923/15 and for respondent no.2 in wp/6477/15.
 Mr. P.R. Katneshwarkar, Advocate for petitioner in wp/6477/15 and for the respondent in wp/8923/15.
 Mr. S.K. Tambe, AGP for the respondent.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 28-06-2016.

Per Court :

1. Petitioners in both the writ petitions are parties to the execution proceedings no. 14 of 2010 pending before Civil Judge Senior Division, Nanded. Petitioners in writ petition no. 6477 of 2015 are decree holders, whereas, petitioners in writ petition no. 8923 of 2015 are the judgment-debtors. The counsel for the

petitioners in both the writ petitions draw attention to paragraph no. 20 of the impugned order which reads, thus:

20. I am giving the table below in respect of calculations made by me. However if there appears some variance parties are at liberty to submit their own calculations. In any case for the purpose of deciding this application I come to the conclusion that decree holder is entitled to future interest at the rate of 6% per annum on principal amount of Rs.40,98,527/- i.e. the date of award. At the same time, decree holder is entitled to Rs.2,79,760/- with future interest at the rate of 6% per annum from 01.05.1998 in respect of bank guarantee and security deposit. Furthermore, judgment debtors are entitled to counter claim amount of Rs. 3,61,213/- in addition to interest thereon at the rate of 6% per annum up to 30.04.1998 which comes to Rs.27,091/-.

2. According to aforesaid observations the court further went on to calculate and ordered the judgment-debtors to make payment pursuant to the same.

3. Thereupon it appears that, an application had been moved by the judgment-debtors submitting that the calculations made by the court may require some clarification.

4. According to learned counsel, despite the request had been made on behalf of the judgment-debtors, without letting any opportunity to the parties concerned, the court went on to pass the orders tending to finalise orders.

5. Learned counsel for the petitioner in writ petition no. 6477 of 2015 appearing for decree holders states that despite the observations under paragraph no. 20, before decree holder could give his calculations as per the order, it appears that the executing court went on to finalise the order without letting any opportunity to the parties concerned to submit their calculations as observed in the order.

6. In view of aforesaid, it would be expedient that the order directing payment pursuant to the calculations made by the executing court dated 10-02-2015 and further order on the same date be set aside.

7. The petitioners in both the petitions shall now avail an opportunity to submit calculations as per the observations in paragraph no.20 and then order be passed by the executing court. The exercise, however, is expected to be done expeditiously and preferably within a period of six weeks from the date of receipt of this order. For said purpose, the order dated 10-02-2015 under sub-paragraph no.1 in paragraph no. 21, and further order of even date to pay amount as per calculation worked out by the court are set aside.

8. Writ petitions stand disposed of with aforesaid observations.

9. Learned counsel further purport to draw attention to the subsequent event about certain payments being made, the parties may make submissions in respect of the same before Civil Judge Senior Division hearing the case, for its consideration.

(SUNIL P. DESHMUKH)
JUDGE