IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 204 OF 2007

1. Government of Goa, through its Chief Secretary, having office at Secretariat, Panaji-Goa.

2. Chief Engineer, Public Works Department, Government of Goa, Altinho, Panaji-Goa.

3. Executive Engineer, Works Division VII, P.W.D., Government of Goa, Altinho, Panaji-Goa. …. Petitioners

Versus

National Projects Construction Corporation Ltd., a Government of India Enterprises, having its office at 30-31, Rajahouse Nehru Place, New Delhi – 110 019, represented through its Unit Officer Shri E. Krishnamoorthy having unit office at N.P.C.C. Ltd. P.O. Gaddasakeri, Bagalkot, G.R.B.C. Karnataka 507 102. …. Respondents

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Ms. Susan Linhares, Additional Government Advocate for the Petitioners.

CORAM:- C.V. BHADANG, J.

DATE:- 2nd August, 2016.

ORAL JUDGMENT:

Heard Ms. Linhares, learned Additional Government Advocate for the petitioners. None appears for the respondent.

2. The challenge in this petition is to the order dated 10.01.2007 passed by the Executing Court in Execution Application No. 4/2006, by which the claim of the petitioners for adjustment has been rejected and the execution is directed to proceed.

3. The brief facts necessary for the disposal of the petition may be stated thus:

That, under an agreement, between the parties, the respondent/decree-holder, had under taken execution of construction work for the petitioners/judgment-debtors. As disputes and differences arose between the parties, the matter was referred to the sole Arbitrator, who passed an award on 31.03.1992, holding that the respondent was entitled to recover Rs.55,75,268, while the petitioners, who had raised a counter claim were entitled to Rs.21,89,937/-. It was thus, found that the net amount payable to the respondent was Rs.33,85,331/- alongwith interest etc. The said award was made rule of the Court under order dated 30.10.1998 passed by the learned Civil Judge Senior Division in C.M.A. No. 96/92/A. The respondent had initiated the aforesaid execution proceedings for execution of the said award.

4. It appears that, subsequent to the passing of the award, the Superintending Engineer and the Competent Authority of the petitioners passed an order on 06.08.1992, levying an amount of Rs.23,50,000/-, as compensation on the respondent. It further appears that the respondent challenged the said order before this Court in Writ Petition No. 47/1993, which was decided on 09.07.1993. This Court directed the Chief Engineer, Mandovi Bridge

Project, to refer the dispute relating to the claim for compensation to the Arbitrator in accordance with the terms of the contract. It appears that in compliance with the said direction, the matter was again referred to the Arbitrator. There is a letter dated 21.02.1995 on record, which shows that the respondent herein had failed to file reply and hence, the Arbitrator had finally closed the arbitration proceedings, as there was no contest.

5. The learned Additional Government Advocate is unable to state whether the Arbitrator has passed an award in the second round of the arbitration proceedings.

6. The petitioners raised a claim for adjustment in respect of the amount of Rs.23,50,000/- before the Executing Court, which has been disallowed. The Executing Court has found that when the dispute was referred to arbitration, there

is neither any award nor it was made a rule of the Court and as such, the adjustment as provided under Order XXI, Rules 1 and 2 of the Code of Civil Procedure (CPC), cannot be looked into. It is this order, which is subject matter of challenge in this petition.

7. The learned Additional Government Advocate submits that the Executing Court has inherent powers to look into a claim for adjustment, which may not be covered, under the provisions of Order XXI, Rule 19 of CPC.

Reliance is placed on the decision of the Calcutta High Court in the case of **Bank of Dacca Ltd. Vs. Gour Gopal Saha, A.I.R. 1936 Calcutta 409.** It is contended that the petitioners having referred the matter to the Arbitrator, had done all that was within the powers of the petitioners and in view of the inherent powers, the Executing Court, the adjustment should have been allowed.

8. I have considered the circumstances and the submissions made and I do not find that the contention can be accepted.

9. It is undisputed that the matter was initially referred to the Arbitrator, in which the Arbitrator had passed an award on 31.03.1992, which has been made the rule of the Court. Under that award, an amount of Rs. 33,85,331/- alongwith interest is payable to the respondent/decree-holder. The respondent is seeking execution of the said award. The learned Additional Government Advocate has not pointed out any award, which was passed after the claim of compensation, was referred to the Arbitrator. Nothing has been brought on record to show that an award was passed or was made rule of the Court (as was then required under the Arbitration Act, 1940). The question is whether in such circumstances, the petitioners can claim adjustment.

10. I have carefully gone through the impugned order. The Executing Court after considering the relevant provisions has come to the conclusion that such adjustment requires certification. The Executing Court has also considered whether the objection of the judgment-debtors can be taken as application for certification under Order XXI, Rule 2 of CPC and whether, it can be enquired into and disposed of under Section 47 of CPC. The Executing Court has further found that the application to record the adjustment or satisfaction, is barred by limitation in view of Article 125 of the Limitation Act.

11. As noticed earlier, the only contention raised on behalf of the petitioners is that the jurisdiction and powers to record adjustment or satisfaction is not limited to the provisions of Order XXI, Rule 2 of CPC and in appropriate case, the Court in exercise of inherent powers can record

such adjustment or satisfaction. Reliance placed on the decision of the Calcutta High Court in support of the said proposition in the case of **Bank of Dacca Ltd.**(supra), to my mind, is misplaced. In that case, certain government promissory notes were deposited with the decree holder-Bank. The Bank had converted the G.P. notes for its own use. It was found that the customer, was bound to pay the loan, for which the G.P. notes were security. It was in these circumstances held that on general principles and in exercise of its inherent powers, the Executing Court can give effect to a claim for set off, even in cases not coming under Order XXI, Rule 19 of CPC.

12. In the present case, there is a dispute as to whether the respondent/decree holder, is liable to pay compensation as levied. Thus, unless and until the dispute is decided by the Arbitrator and there is a executable award, no claim for adjustment

or satisfaction could justifiably be made. I do not find that the impugned order suffers from any jurisdictional error, requiring interference.

In the result, the Writ Petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

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