

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12359 OF 2017

Mr.Punna Kesav Paghu	...	Petitioner
V/s.		
The State of Maharashtra & Anr.	...	Respondents

Mr.Sandeep Sharma i/b. Mr.Toni S. Sachdevani for the Petitioner.
Mr.A.R. Metkari, A.G.P. for Respondent No.1-State.
Mr.Ajay Nair for Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the Petitioner, learned A.G.P. for Respondent No.1-State and learned counsel for Respondent No.2.

2] This Writ Petition is preferred under Article 227 of the Constitution of India challenging the order dated 31st March, 2017 passed by District Judge-2, Kalyan in Regular Darkhast No.526 of 2015 on the application Exhibit (14). By the said application, the Petitioner herein, who is a judgment debtor in execution proceeding has sought stay to the execution of the award on the count that he has preferred

the appeal against the said award and that appeal is pending before the Minister. The perusal of the impugned order passed by the executing Court reveals that the trial Court has rejected the said application in view of the provisions of Section 36 (2) of the Arbitration and Conciliation Act, 1996 which read as follows:

“36(2) :- Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.”

3] This Section thus clarifies that mere filing of application for setting aside award under Section 34 of the Act is not sufficient to operate as a stay to the execution proceeding. Admittedly, in this case, no such stay order is obtained by the Petitioner from the Appellate Forum. Therefore, the executing Court has rightly rejected the Petitioner's application for stay. In this respect the executing Court has also rightly considered the provisions of Order-41 Rule-5 of Civil Procedure Code which specifically state that mere filing of appeal will

not operate as stay to the order.

4] In this Writ Petition, the only submission advanced by learned counsel for the Petitioner is that Section 36(2) of the Act is newly amended Section which came into effect from 23rd October, 2015. Earlier no such provision was on the statute book and therefore it is urged that such provision which is inserted newly with effect from 23rd October, 2015 cannot have any retrospective operation as in this case the arbitration award is passed on 29th January, 2013 and rectified on 16th October, 2014.

5] However, this aspect is also properly dealt with by learned trial Court by holding that the execution proceeding in the case is filed on 5th November, 2015 i.e. after the amended provision of Section 36 (2) of the Act came into force.

6] It is submitted by learned counsel for the Petitioner that the appeal in this case is filed in the month of December, 2014 and therefore the amendment brought by Section 36(2) of the Act will not be applicable. To counter this submission, learned counsel for the Respondent submits that though the appeal was alleged to be filed in

2014, it was not pursued till now.

7] In such situation, when all the aspects of the matter are properly considered by the executing Court, in the Writ Jurisdiction, this Court should restrain itself from passing any order, much less that of the stay order. Moreover, it is pointed out by learned counsel for the Respondent that now the appeal is registered and notice thereof is received by the Respondent and returnable date was 22nd November, 2017. Thus, it is apparent that the Appellate Forum is seized of the matter. Hence on this count also, it is all the more necessary that this Court should stay itself away from passing any order of the stay.

8] The Writ Petition, being thus without merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]