

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 573 of 2018

Sanjay Mishra, S/o. Late Shri Rambadan Mishra, Aged about 50 years,
R/o. Ring Road, Bouripara, Ambikapur, District Surguja, Chhattisgarh.

---- **Petitioner**

Versus

Deeksha Construction Sanchalak, Mukesh Goswami, S/o. Shri
S.K.Goswami, Aged about 42 years, R/o. Darripara, Ambikapur, District
Surguja, Chhattisgarh.

---- **Respondent**

For Petitioner : Mr. V.K.Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10.07.2018

Heard

1. The present petition is against the part of the order dated 16.05.2018 whereby the part of the amount deposited by the judgment debtor pursuant to execution of decree has been declined to be given to the petitioner.
2. Earlier by an order dated 11.01.2018 in W.P.(227) No.48/2018, which was filed by the Diksha Construction, the Court has passed the following order :

“Learned counsel for the petitioner submits that the petitioner has challenged the arbitral award which was registered as Civil M.J.C. No. 102/2017 wherein an application for urgent hearing was also filed along with the stay application. However, the execution proceeding of the arbitral award and the proceeding of Civil MJC No. 102/2017 was taken up on the same day i.e. 14.12.2017 and the execution of the award for recovery by coercive process has been ordered whereas the prayer to decide the stay application has not been considered therefore, the execution proceeding may be stayed.

Perused the order dated 14.12.2017 passed in execution case of the arbitral award as also the order dated 14.12.2017 which was passed in Civil MJC No. 102/2017. The application u/s 34 read with section 34 (2) of the Arbitration and Conciliation Act, 1996 is also perused.

Considering the fact that the execution warrant arising out of arbitral award dated 16.08.2015, copy of which is filed as Annexure P/2 and since the same arbitral award which is subject of challenge in Civil MJC No. 102/2017, in the opinion of this Court, if the entire recovery is made, then the challenge to the award in Civil MJC No. 102/2017 would become infructuous. In view of the existing facts situation of the case, it is directed that on petitioner's depositing 35% of the arbitral award which is under execution, the rest of the recovery shall remain stayed till the application for stay of the award is decided which is filed in Civil MJC No. 102/2017.

With such observation, this petition stands disposed of."

3. Learned counsel for the petitioner submits that pursuant to such order, 35% of the amount has been deposited by the judgment debtor and the petitioner who is decree holder may be allowed to withdraw the same otherwise it will not serve any purpose.
4. Considering the prayer made, in the spirit of the order, it is directed that the petitioner shall be entitled to receive the amount so deposited by the judgment debtor pursuant to the order dated 11.01.2018 passed in W.P.(227) No.48 of 2018 after furnishing security.
5. With such observation, the petition stands disposed of.