

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.14464 OF 2017
WITH
CIVIL APPLICATION NO.3538 OF 2016
IN
ARBITRATION APPEAL NO.1 OF 2016**

Shri Manish s/o Dharshibhai Parmar = **APPLICANT**
(Orig. Respondent)

VERSUS

Godawari Maharashtra Irrigation
development Corporation, Aurangabad
Through its Executive Engineer. = **RESPONDENT**
(Orig.Appellant)

Mr.Amol K. Gawali,Advocate for Applicant;

Shri A.C.Dharmadhikari, Adv. h/for Shri BR Surwase,
Advocate for Respondent.

CORAM : P.R.BORA, J.

DATE OF RESERVING ORDER: 13th MARCH, 2018
DATE OF PRONOUNCING ORDER: 19th MARCH, 2018.

PER COURT:

1) In the present matter, arguments of learned Counsel appearing for parties were heard by this Court on 1st March, 2018 and the matter was adjourned to 9th March, 2018 for further consideration and for clarification, if any,

required from the parties.

2) On 9th March, 2018, learned Counsel appearing for applicant placed on record an order passed by the learned Single Judge of this Court (Coram: N.W.Sambre,J.) on 6th November, 2017 in Civil Application No.3005/2017 in Arbitration Appeal No.1/2017 and the copy of the order passed by the Hon'ble Apex court on 5th February, 2018 in *SLP (Civil) No.2885/2018*.

. On 9th March, 2018 additional submissions were also made by the learned Counsel for the parties, however, since the court time was over, order on the civil application was reserved.

3) The applicant, who is respondent in the Arbitration Appeal, has filed the present application praying for vacation of interim relief granted by this Court vide order passed on 21st March, 2016 in Civil Application No.3538 of 2016. In the alternative, direction is sought against the present respondent i.e. appellant in the Arbitration Appeal, to deposit entire amount as per the Award dated 15th November, 2013 passed

by the learned Arbitrator Shri T.N.Mundhe along with interest accrued thereon as directed by the said Arbitrator.

4) On 21st March, 2016, this Court had passed an order thereby directing the present respondent to file an undertaking in this Court on an affidavit that an amount of Rs. 3,50,00,000/- (Rupees three crores and fifty lakhs) shall be maintained in its Account No. 52071925960 held with State Bank of Hyderabad (Now State Bank of India) Shahagunj Branch, Aurangabad until further orders. Consequently, it was further directed that the order dated 3rd February, 2016 passed by the learned Principal District Judge, Parbhani shall be kept in abeyance until further orders.

5) The arbitral award has been passed by the sole Arbitrator Shri T.N.Mundhe on 15th November, 2013 in favour of the present applicant. The principal amount awarded under

the Award is Rs.2,53,26,408/- (Rupees two crores fifty three lakhs twenty six thousand four hundred and eight). The Arbitrator has also awarded interest on the aforesaid principal amount from 20th April, 2004 to 15th November, 2013 @ 18% p.a. which comes to Rs.4,36,27,270/- (Rupees four crores thirty six lakhs twenty seven thousand two hundred and seventy). Thus, the total awarded amount of the award dated 15.11.2012 is Rs.6,89,53,678/-(Rupees six crores eighty nine lakhs fifty three thousand six hundred and seventy eight).

6) The Arbitral Award was challenged by the respondent Corporation before the Principal District Judge, Parbhani vide Misc. Application (RJE) No. 103/2014 under Section 34 of The Arbitration and Conciliation Act, 1996. The learned Principal District Judge, vide his judgment and order passed on 25th November, 2015 has dismissed the aforesaid application.

7) The aforesaid order passed by the learned Principal District Judge, Parbhani and the Arbitral Award are challenged by the respondent Corporation by filing Arbitration Appeal No.1/2006 before this Court invoking the provisions under Section 37 of The Arbitration and Conciliation Act.

8) In Arbitration Appeal, Civil Application No.3538/2016 was preferred by the respondent Corporation and the same has been allowed in terms of order passed by this Court on 21st March, 2016. As noted herein above, the present application is filed by the original respondent in Arbitration Appeal for vacation of the aforesaid order passed by this Court on 21st March, 2016.

9) Shri A.K.Gawali, learned Counsel appearing for the applicant, submitted that the award passed in favour of the applicant on 15.11.2013 by the sole arbitrator is, in fact, a

money decree, which has also been upheld by the learned Principal District Judge, vide its judgment and order dated 25.11.2015 passed in Misc. Application (RJE) No.103/2014.

10) Taking me through the provisions of Order 41 Rule 5 of Code of Civil Procedure, the learned Counsel submitted that deposit of the entire decretal amount in the appellate court is a pre-condition for seeking stay from the appellate court and unless such amount is deposited, the execution of the said money decree cannot be stayed by the appellate court. The learned Counsel further submitted that on the strength of the order passed by this Court on 21st March, 2016, the respondent is enjoying stay to the execution without depositing any amount in this Court.

9) Shri A.C.Dharmadhikari, learned Counsel appearing for respondent – Corporation opposed the submissions made on behalf of the applicant.

The learned Counsel submitted that elaborate submissions were made by both the parties at the time of hearing of Civil Application No. 3538/2016 and only thereafter the interim order came to be passed on 21st March, 2016. According to the learned Counsel, it is, therefore, not permissible for the present applicant to again agitate the same issues and to seek vacation of the said interim order. The learned Counsel further submitted that clause 1.16.0, which is part of the contract between the applicant and the respondent, specifically provides that no interest will be payable on money due to the contractor. The learned Counsel further submitted that substantial objections are raised by the respondent Corporation in regard to grant of interest by the arbitrator. The learned Counsel to support his contention, placed reliance on the judgment of the Hon'ble Apex court in the case of Union of India Vs. Bright Power Projects (India) Pvt.Ltd. - 2016(3) Mah.L.J. 1.

10) The learned Counsel further submitted that there is no such absolute proposition that money decree cannot be stayed in any case and if at all the same is to be stayed, judgment debtor has to deposit entire decretal amount before the appellate court. The learned Counsel submitted that the appellate court in its discretion may, in certain cases, direct furnishing of security instead of deposit of the decretal amount in the court. The learned Counsel further submitted that this Court, while passing the order dated 21st March, 2016, has judiciously exercised the said discretion.

11) As I have mentioned above, on 9th March, 2018, the learned Counsel for the applicant has placed on record a copy of the order dated 6th November, 2017 passed by this Court (*Coram: Nitin W.Sambre, J.*) in Civil Application No.3005/2017 in Arbitration Appeal No.1/2017. The aforesaid Arbitration Appeal is filed by the respondent – Corporation against the arbitral award passed in

favour of M/s Shinde & Sons, the respondent in the said appeal. It is not in dispute that in the said appeal also, the main issue, agitated by the respondent corporation, is power of the arbitrator to grant interest when the parties to the contract had agreed that interest would not be awarded on the amount payable to the contractor under the contract.

12) On perusal of the said order, it is revealed that similar argument was advanced by the respondent Corporation before the said court also that respondent is a statutory corporation and there may not be any difficulty for the applicant to recover the amount from the respondent corporation in the event the arbitration appeal filed by the respondent corporation eventually fails. It was, therefore, submitted on behalf of the respondent corporation that deposit of the decretal amount be dispensed with as the said amount can be put to better use for implementing public projects. It is a matter

of record that after having considered the submissions made as above, the learned Single Judge was pleased to stay the further execution of the award passed in favour of the contractor therein subject to applicant corporation depositing 60% of the decretal amount in this Court. The aforesaid order was questioned by the respondent Corporation before the Hon'ble Apex court by filing *Special Leave Petition (Civil) No.2885/2018*. The Hon'ble Apex court, however, has dismissed the said SLP on 5th February, 2018. A copy of the order passed by the Hon'ble Apex court is also placed on record by the applicant.

13) Referring and relying upon the aforesaid order, it was submitted by learned Counsel Shri A.K.Gawali that same course can be followed in the present application also since the issues involved in both the matters are substantially same. The learned Counsel pointed out that in the Arbitration Appeal No. 1/2017, the interest component awarded by the Arbitral Tribunal is

around Rs.11,00,00,000/- (Rupees eleven crores) and in spite of that, this Court has directed the respondent corporation to deposit 60% of the decretal amount in this Court. The learned Counsel submitted that in the present matter, the interest awarded by the learned arbitral tribunal is around Rs.4,36,00,000/- i.e. much less than the interest awarded in the said matter.

14) As noted by me in the order passed on 9th March, 2018, the learned Counsel for the respondent did not dispute the factual aspects, as were brought to the notice of this court in regard to the arbitration appeal No.1/2017 filed by the respondent corporation and the order passed in civil application therein on 6.11.2017. In the aforesaid circumstances, I deem it appropriate to follow the same course as has been adopted by this Court while passing order on 6th November, 2017 in Civil Application No.3005/2017 in the Arbitration Appeal No.1/2017. Hence, the following order, -

ORDER

i) Execution of the Arbitral Award impugned in Arbitration Appeal No.1/2016 shall stand stayed subject to deposit of 60% of the decretal amount by the respondent, i.e. Godavari Marathwada Irrigation Development Corporation, Aurangabad, in this Court within a period of three months from today;

ii) The Order passed by this Court on 21st March, 2016 stands modified accordingly;

iii) If the amount is not deposited as stipulated in clause (i) above, the present interim order passed today shall stand automatically vacated without further reference to the court;

iv) The Civil Applications stand disposed of in the aforesaid terms.

(P . R . BORA)
JUDGE

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