IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 CIVIL APPLICATION NO. 4454 OF 2018
IN ARBA/3/2011 WITH CA/1351/2011 IN ARBA/3/2011

The Municipal Council Faizpur
Through its Chief Officer ..Applicant

VERSUS

M.B. Angadi Through his
Power of Attorney Holder ..Respondent

Mr. Rajendra Deshmukh h/f Mr. Dayama R. Nirmal,Advocate for Applicant.
Mr. Naik Thigale, Advocate For Respondent.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 27th July, 2018

PER COURT

. Heard learned counsel for the parties. This civil application has been moved reviving the request for stay to Special Darkhast No. 01 of 2017 pending before the Civil Judge, Senior Division, Bhusawal.

2. The arbitrator has awarded an amount of Rs. 37,57,827/- under order dated 08-06-2007 and has granted interest at the rate of 18% from 01-06-2007 to actual date of

payment upon failure to deposit amount as directed on or before 08-09-2007.

3. This award had been subject matter of challenge under Section 34 before the District Court. The District Court has dismissed the same under judgement and order dated 22-11-2010. Appeal therefrom has been preferred before this Court bearing Arbitration Appeal No. 03 of 2011 alongwith Civil Application No. 1351 of 2011 for stay.

4. The appeal has been admitted under order dated 14-06-2011 fixing the same for final hearing on 13-07-2011. Order on the Civil Application had not been pressed but, the application had been kept pending. It was made to stand over to 13-07-2011. Since then, aforesaid matters are pending and had not been heard finally.

5. In the meanwhile, it appears that execution proceeded with and an order came to be passed attaching the bank accounts of the applicant as was specified in Schedule 'B'

to the extent of Rs. 1 Crore as well as the immovable property at Serial No. 1 therein, subject to decision on Exh.42 in Special Darkhast No. 01 of 2017. This order was passed on 12-11-2014 and since then, the properties are under attachment.

6. Application Exh.42 in Special Darkhast No. 01 of 2017, however, had been preferred before the Court to hold that the properties referred to in Schedule 'B' are not available for attachment and sale by public auction. The properties cannot be attached and sold by public auction without necessary sanction from the Government and to dismiss it being not maintainable. Application Exh.42 stands dismissed under order dated 18-01-2018.

7. Learned counsel for the applicant at the outset submits that the municipal council is in deep economic crises and is not in a position to pay the amount of Rs. 1 Crore immediately. It is being pointed out that in the bank account, which is under attachment, an amount of Rs. 21,00,000/- lying and the same can be offered to be deposited in this Court. He

further submits that such grave economic situation pervades almost all 'C' Class municipal councils in State. Adopting a pragmatic approach, request under present application be considered and the applicant be granted reasonable time to deposit the amount. He submits that a larger time be given to make arrangements for depositing rest of the amount.

8. On the other hand, learned counsel Mr. Thigale, appearing for the respondent submits that work executed is of the year 1996 and since then, the respondent has been making the applicant to run from pillar to post to realize amount due to him in respect of the same. Award is of 2007 granting interest at the rate of 18% p.a. on the awarded amount and according to his instructions amount now is around Rs. 3.5 Crore. He submits that respondent is in very much need of the amount. He is under tremendous pressure. Liabilities incurred have to be taken care of. He submits that the amount of Rs. 1 Crore referred to is of 2014 and is an amount, which is far too small considering the amount which now has been accumulated.

9. He submits that having regard to Section 26 of the Amending Act, the pending executions under the unamended act would be governed by the provisions of amended enactment. He further submits that having regard to the time gap since 1996, no leniency deserves to be shown in this application.

10. He purports to refer to and rely a few orders, one is dated 06-11-2017 in Civil Application No. 3005 of 2017 in Arbitration Appeal No. 1 of 2017. He further refers to order passed by the Supreme Court, wherein, the Court had modified order of this Court directing Godawari Marathwada Irrigation Development Corporation (GMIDC) to deposit 100% of the amount and had let the claimants to withdraw the same, subject to security.

11. In given facts and circumstances, the municipal council, which is of 'C' Class is stated to be not in good economic state and it is being stated that such a situation is prevailing in majority of 'C' Class municipal councils in the

State.

12. Looking at award amount, interest, time lag and calculations of amount, in the circumstances, it appears to be expedient that the applicant municipal council would deposit an amount of Rs. One Crore.

13. Learned counsel submits that applicant undertakes to transfer Rs. 21,00,000/- lying in the attached bank account and to deposit the same within a period of four weeks from the date of this order.

14. The applicant shall deposit an amount of Rs. 30,00,000/- within further period of four weeks therefrom and a further amount of Rs. 49,00,000/- would be deposited in this Court within a period of eight weeks thereafter.

15. Learned counsel for the applicant urges to hear the appeal expeditiously. Place the Arbitration Appeal No.3 of 2011 for final hearing on 14th December, 2018. Till such time, the attachment order passed on 12-11-2014 and the second clause of order dated 18-01-2018 be kept in abeyance.

16. In case the first installment of amount of Rs. 21,00,000/- is deposited within time, respondent is at liberty to withdraw the same, subject to furnishing solvent security to the satisfaction of Registrar (Judicial). The respondent would be at liberty to make appropriate application on deposit of further amounts for withdrawal. In case of failure of deposit of the first installment of Rs. 21,00,000/-, effect and operation of this order shall cease to operate forthwith.

17. In the circumstance, so far as the Special Darkhast7 is concerned, all the stages upto the stage of passing final order may be completed. Needless to refer that the withdrawal of amount by respondent should be subject to outcome of the appeal.

18. With aforesaid, civil application is disposed of.

[**SUNIL P. DESHMUKH**]
JUDGE

Mujaheed