

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (227) No.76 of 2019

Venkatesh Earthen Pvt. Ltd. 177/2B, Nehru Nagar, Baijnath, P.O. -
Tilwaraghat, Jabalpur – 482 003 Through its authorized representative
V.P. Dubey, S/o Sh. P.N. Dubey

---- Petitioner

Versus

1. Union of India, Through its General Manager, South East Central Railways, Bilaspur, District – Bilaspur, Chhattisgarh
2. Chief Engineer (Const.)/II, Through Deputy Chief Engineer (Const.), South East Central Railways, Jabalpur, Madhya Pradesh

---- Respondents

For Petitioner:-	Mr.V.R.Rao, Senior Advocate with Mr.Abhishek Vinod Deshmukh, Advocate
For Respondents:-	Mr.Abhishek Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/05/2019

1. The Arbitral Tribunal while adjudicating the arbitral dispute between the parties delivered an award on 26.11.2016 in favour of the petitioner herein directing payment of ₹.1,15,59,187/- and further held that claimant/petitioner is entitled to claim interest at the rate of 18% per annum as provided by the Act and to encash the bank guarantee. Thereafter, application filed by the respondents herein under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act of 1996”) was dismissed by learned Third Additional District Judge, Jabalpur on 4.9.2017, feeling aggrieved against that order, the respondents herein preferred an appeal under Section 37 (1)(C) of the

Act of 1996 before the High Court of Madhya Pradesh. The Division Bench of High Court of Madhya Pradesh passed an interim order dated 22.01.2018 and directed that in case the appellants deposit 50% of the amount awarded by the Court below within a period of four weeks from today, the operation and execution of the impugned award shall remain stayed and the amount so deposited shall be kept in a Fixed Deposit so that it earns interest. The order dated 22.1.2018 was questioned by the petitioner before the Hon'ble Supreme Court, in which Their Lordships while disposing of the SLP vide order dated 19.3.2018 granted liberty to the petitioner to withdraw the amount deposited before the High Court in pursuance of the order passed in the appeal. Thereafter, on 5.4.2018 the respondents deposited an amount of ₹ 57,79,594/- before the District Judge, Bilaspur stating to be in compliance of interim order dated 22.1.2018 passed by the High Court of Madhya Pradesh which the petitioner applied for and was disbursed to him by learned District Judge, Bilaspur on 16.4.2018 without any objection. After withdrawal of the said amount, on 26.4.2018 the petitioner herein filed an application for appropriate directions stating that since the respondents herein failed to comply with the order dated 22.1.2018 in its letter and spirit passed by the High Court of Madhya Pradesh within the stipulated time, therefore, stay on execution of award stands vacated on 9.4.2018. That application was rejected by learned District Judge, Bilaspur on 18.1.2019, against which, this writ petition has been filed by the petitioner herein.

2. Mr.V.R.Rao, learned Senior Counsel appearing for the petitioner, would submit that admittedly and undisputedly, the respondents have failed to deposit the amount of interest which learned Arbitrator has awarded to the petitioner and therefore, the respondents are not entitled to claim the benefit of interim order passed by the High Court of Madhya Pradesh, as such, the decree has become executable and learned District Judge has committed legal error in holding that interim order dated 22.1.2018 passed by the High Court of Madhya Pradesh has complied with by the respondents in its letter and spirit. Therefore, the impugned order is liable to be set aside.
3. On the other hand, Mr.Abhishek Sinha, learned counsel for the respondents, would submit that in compliance of order of the High Court of Madhya Pradesh dated 22.1.2018, 50% of the total amount i.e. ₹ 57,79,594/- was deposited by the respondents, which the Hon'ble Supreme Court permitted the petitioner to withdraw, which the petitioner has withdrawn on 16.4.2018 without any protest or demur and after withdrawing the said amount, application for appropriate directions seeking deposit of entire amount has been filed, which has rightly been rejected by learned District Judge.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. It is not in dispute that the respondents deposited an amount of ₹ 57,79,594/- stating to be in compliance of the order dated 22.1.2018 and pursuant to the order of the Hon'ble Supreme Court, the petitioner

has withdrawn the said amount without protest/demur and thereafter filed an application for directing the respondents to deposit the balance amount. Learned District Judge has considered the matter and came to the specific conclusion that the petitioner has withdrawn an amount of ₹ 57,79,594/- deposited by the respondents in compliance of order dated 22.1.2018 without any protest or demur and therefore, the order of the High Court of Madhya Pradesh dated 22.1.2018 stands complied with and rejected the application, in which I do not find any illegality or perversity warranting interference in exercise of jurisdiction under Article 227 of the Constitution of India.

6. Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed. However, this will not bar the petitioner to proceed in accordance with law and to avail the remedy available under the law. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-