

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5711 OF 2018
(Shri Tulja Bhawani District Stadium Committee Vs. Rahul
Ramkrushna Makode)

WITH

CIVIL APPLICATION NO.5714 OF 2018
IN
ARBITRATION APPEAL STAMP NO.10594 OF 2018

WITH

CIVIL APPLICATION NO.5716 OF 2018
WITH
CIVIL APPLICATION NO.5717 OF 2018
IN
ARBITRATION APPEAL STAMP NO.10583 OF 2018

Mr.R.S.Deshmukh, learned Advocate for the applicant.
Mr.A.K.Gawali, learned Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/02/2019

PER COURT :

1. I have considered the submissions of the learned Advocates for the respective sides at length on 01/02/2019. This matter was adjourned to this day to enable the applicant to take instructions as regards depositing an amount in this Court.

2. The appellant has challenged the awards dated 07/09/2016 delivered in MCA Nos.4/2014 and 181/2013 passed by the learned Principal District Judge, Osmanabad by which the claim of the

original applicant, to receive professional fees for an amount of Rs.37,66,306/- alongwith interest @ 18% p.a. for the period mentioned, is allowed. It is stated that the said amount alongwith interest is approximately Rs.80,00,000/- today. The bank account of the appellant bearing No. 52192506893 held with State Bank of India, Osmanabad has been frozen in view of the execution proceedings initiated by the original plaintiff.

3. Having heard the extensive submissions of the learned Advocates and since circumstances requiring adjudication of the application for interim relief while deciding the application for condonation of delay appeared necessary, that the appellant was called upon to submit as to whether it would deposit a substantial amount. Learned Advocate for the original claimant had stated that the amount of at least 37,00,000/- should be deposited and the claimant desires to withdraw the entire amount.

4. Learned Advocate for the appellant submits on instructions that the account frozen by the orders of the Executing Court, could be released from the said order and an amount of Rs.35,00,000/- would be withdrawn from the said account and would be deposited in this Court within 3 (three) weeks.

5. Learned Advocate for the claimant submits that the claimant may be permitted to withdraw 50% of the deposited amount by giving solvent surety and the remaining 50% of the deposited amount would be withdrawn on an affidavit undertaking. Learned Advocate for the appellant has opposed the said request on the ground that the issue raised in these appeals is that excessive fees have been charged by the claimant as an Architect and permitting the claimant to withdraw the deposited amount would be more than the amount that he would be actually entitled to.

6. I have considered the submissions of the learned Advocate recorded as above and in the light of the same, CA Nos.5711/2018 and 5716/2018 stand allowed. The delay of 487 days is condoned by recording the statement that the appellant would deposit Rs.35,00,000/- in this Court. The bank account is released from the order passed by the Executing Court. The arbitration appeals be registered.

7. Consequent to the above directions, CA Nos.5714/2018 and 5717/2018 would stand allowed with the following directions :-

[a] The bank account of the appellant, details of which are

recorded hereinabove, shall stand released from the order of the executing Court dated 31/12/2018 passed in RD No.215/2017.

[b] The bank shall permit the appellant to operate the said account within 1 week from today.

[c] The petitioner shall deposit an amount of Rs.35,00,000/- in this Court on or before 28/02/2019.

[d] The respondent/original claimant is permitted to withdraw an amount of Rs.20,00,000/- by furnishing an affidavit undertaking that if ultimately he is held to have withdrawn excess amount, he would return the excess amount by re-depositing it in this Court within 6 weeks from the date of such an order, without interest. If the amount is not deposited within the said period, interest @ 6% p.a. would be levied on the excess amount till it is re-deposited in this Court.

[e] The remaining amount of Rs.15,00,000/- shall be invested by the Registry in a fixed deposit receipt in a Nationalized Bank at Aurangabad for an initial period of 6 months and renewable until the appeals are decided.

[f] In the event the claimant desires to seek withdrawal of the said amount of Rs.15,00,000/-, he would be at liberty to make an application setting forth reasons for supporting his request and such an application would be considered by this Court on its own merits.

[g] Considering the above, the impugned order shall stand stayed and the claimant shall not proceed with the execution proceedings.

7. The Arbitration Appeals shall be listed for a hearing on 27/03/2019. The respondent/claimant is at liberty to enter an affidavit in reply on or before 08/03/2019.

8. By the consent of the parties, the record and proceedings in MCA Nos.4/2014 and 181/2013 decided by the Principal District Judge, Osmanabad on 07/09/2016, be called for.

9. Learned Advocate for the original claimant causes an appearance in both the appeals.

(Ravindra V.Ghuge, J.)