

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13926 OF 2019

Morya Infrastructure Pvt. Ltd. Petitioner

Versus

The State of Maharashtra Respondent

Mr. J.N. Singh with Mr. A.S.Kulkarni, Advocate for the petitioner.
Mr.S.R. Yadav, AGP for the Respondent.

WITH
CIVIL APPLICATION ST. NO. 11854 OF 2019 WITH
REVIEW APPLICATION ST. NO. 30243 OF 2019 IN
WRIT PETITION NO. 14314 OF 2018

Morya Infrastructure Pvt. Ltd. Applicant

Versus

The State of Maharashtra Respondents

Mr. J.N. Singh with Mr. A.S.Kulkarni, Advocate for the applicant.
Mr.S.R. Yadav, AGP for the Respondent.

CORAM : Ravindra V.Ghuge, J.

DATE : 21st November, 2019.

PER COURT :

1. This matter was heard on 19.11.2019 and was further heard today along with review application.

2. For the reasons set out in the civil application and as the delay occurred is minor, the civil application is allowed. The Review Application stands registered and is taken up for hearing forthwith, by the consent of the parties.

3. The claimant is aggrieved by order dated 10.07.2019 passed by the learned District Judge -1, Beed by which, application Exhibit 19 seeking withdrawal of amount in MCA Arbitration No. 87/2018, has been rejected.

4. I have considered the strenuous submissions of the learned Advocate for the petitioner and the learned AGP on behalf of the respondents.

5. Upon perusing the grounds raised in the review petition, I find that the review petitioner practically desires to re-argue the writ petition. The Honourable Apex Court has deprecated entertaining a review application as if it is an original proceeding, in the judgment delivered in the matter of Lily Thomas Vs. Union of India [AIR 2000 SC 1650].

6. The grounds raised in the review application are such that those issues were dealt with by this Court while deciding the writ petition in which this Court has passed an order on 12.03.2019.

7. In view of the reasoned order passed by this Court and considering the grounds raised in the review petition, as no error apparent on the face of the order could be pointed out, the review application stands rejected.

8. The learned AGP points out that the order passed by this court dated 12.03.2019 in the Writ Petition was assailed before the Honourable Apex Court and all the grounds raised in the review petition were canvassed before the Honourable Apex Court. The SLP has been dismissed.

9. Insofar as the impugned order dated 10.07.2019 is concerned, the petitioner submits that he has invested his life time earning in the said project. The project dates back to 2003. Neither has the consideration been received by him, nor has the trial Court permitted the petitioner to withdraw any amount despite leave

granted by this Court in the order dated 12.03.2019. According to him, if he succeeds in the proceedings, he would stand to receive about Rs. 6,00,00,000/-.

10. The learned AGP has vehemently opposed the petition putting forth the request for withdrawal of amount. He submits that the State has a strong case to point out the glaring deficiencies in the project. The learned AGP further submits that as the State Government took a policy decision to abolish collection of toll and exempt cars, three wheelers and two wheelers in some areas, compensation was quantified by the State. The present petitioner had received an amount of Rs. 68,00,000/- towards compensation.

11. There is no dispute that the State Government has deposited 50% of the arbitral award amount i.e. Rs. 2,98,30,000/-, before the trial Court.

12. The learned Advocate for the petitioner submits that the petitioner is willing to abide by such conditions as may be imposed by this Court, for withdrawal. He points out that the petitioner has made a statement before the trial Court as is recorded in the

impugned order that the petitioner is ready to furnish solvent security to safe-guard the interest of the State.

13. Considering the above and keeping in view that an amount of Rs. 68,00,000/- has already been paid to the petitioner by way of compensation by the State, this petition is partly allowed. The petitioner is permitted to withdraw an amount of Rs. 1,00,00,000/- from the trial Court subject to furnishing of solvent security to the satisfaction of the trial Court.

14. While making an application for withdrawal, an affidavit undertaking shall also be tendered by the petitioner declaring that if the petitioner is held dis-entitled for any amount over and above the amount of compensation paid by the State, the said amount shall be re-deposited before the trial Court or would be set off against the solvent security and the petitioner shall not object to such recovery of amount. If the petitioner, being aggrieved by any adverse order of the trial Court, approaches this Court, it would be a pre-condition that the amount should be credited to the State. As such, the impugned order dated 10.07.2019 stands set aside.

15. Needless to state that the trial Court, while deciding the pending proceedings, shall not be influenced by the observations of this court appearing in the order dated 12.03.2019 and shall consider the entire record and evidence before it and decide the said proceedings.

(Ravindra V.Ghuge, J.)

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