

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.83 OF 2016
(Godavari Marathwada Irrigation Development Corporation Vs.
Damodar Baburao Avhad)

Mr.S.C.Arora, Advocate for the petitioner.
Mr.S.S.Wagh h/f Mr.P.R.Nangre, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/03/2019

PER COURT :

1. On 27/02/2019, after this matter was heard extensively and before I could commence the dictation of the order, I called upon the parties to consider whether this litigation could be brought to an end. For the said purpose, I passed the following order :-

“1. I have heard this matter for quite some time.

2. Considering the rival contentions and the dispute involved, I find that the matter needs to be put to rest by making such payment to the respondent which would reasonably satisfy his claims in the proceedings.

3. An amount of Rs.2,17,000/- has been deposited by the petitioner/Corporation in this Court in 2011 in WP No.3226/2011, which is still in this Court. An amount of Rs.10,00,000/- has been deposited in this Court on

06/05/2016 pursuant to the order dated 20/03/2016 passed by this Court. As such, both these amounts are gathering interest.

4. I have therefore put it to the learned Advocates as to whether this entire amount with accrued interest can be received by the respondent/decreed holder towards full and final settlement of his claims, keeping in view that an amount of Rs.12,46,000/- has been paid by the Corporation to the respondent on 26/12/2006.

5. Both the learned Advocates seek time to take instructions.

6. Stand over to 07/03/2019 for "passing orders".

2. Learned Advocate for the respondent/decreed holder submits on instructions that if the amount, as is mentioned in paragraph No.4 of the above reproduced order, is granted, this litigation could come to an end. He, therefore, sought leave to withdraw the said amount.

3. Learned Advocate for the petitioner/Corporation has raised a strong objection and submits that whatever amount was earlier paid on 26/12/2006, would be a complete settlement of the said issue. In the alternative, it is submitted that this Court may proceed to pass an appropriate order on the merits of the case.

4. The petitioner is aggrieved by the order dated 03/05/2014 passed by the Executing Court by which the objection raised by the petitioner was rejected. It is contended that after the sole Arbitrator passed an award for an amount of Rs.17,10,723/- alongwith interest on the principal amount of Rs.13,54,092/- at the rate of 18%, the parties entered into negotiations. Finally, an amount of Rs.12,46,000/- was paid by the Corporation to the decree holder on 26/12/2006 and this was therefore a complete settlement and satisfaction of the decree. It is further contended that when the parties had negotiated and the amount was paid, the decree could not have been put to execution vide the execution proceedings.

5. Learned Advocate for the decree holder submits that there was no settlement between the parties as would be permissible in Law. Though both the sides entered into negotiations in order to explore the possibility of a settlement, there was no settlement arrived at as the petitioner never kept its word and continued to delay the matter with the intention of tiring out the respondent. He further submits that a settlement cannot be foisted on any party and a settlement cannot be presumed on assumptions and presumptions.

6. I find from the record that after the award was pronounced, a correspondence took place between the parties. The respondent issued a letter dated 23/05/2015 to the petitioner indicating that if an amount of Rs.17,10,723/- was paid to him on or before 30/06/2005, he would waive the interest from 01/01/2005. Another letter was sent on 13/10/2005 extending the time till 31/11/2005 and he further agreed to waive the interest even upto 30/11/2005 though the interest amount was Rs.2,82,270/-. This deadline was also missed by the petitioner.

7. The respondent then again sent a letter on 30/11/2005 stating that if the amount was paid within 8 days, he would still waive the interest. When this did not occur, he issued another letter on 27/01/2006 setting the deadline to 28/02/2006.

8. The record further reveals that the petitioner paid an amount of Rs.12,46,000/-, which was even lesser than the principal amount, on 26/12/2006. The respondent accepted the said amount. There was no written settlement between the parties. Such payment was made by the petitioner voluntarily. The respondent contends that the figure of 12,46,000/- was nowhere quoted/consented and the minimum amount that was to be paid by the petitioner was

Rs.17,10,723/-. He accepted the said amount as he had no reason to refuse to accept it. This, however, would not amount to even a tacit consent.

9. It requires no debate that in such matters, a settlement should be reduced into writing or, in the alternative, such a settlement could be brought to the notice of the Court or the Executing Court as the case may be, and such settlement will have to be recorded by the concerned Court under Order XXI Rule 2 of the Civil Procedure Code. In any case, the respondent had never consented to accept an amount of Rs.12,46,000/- as a full and final settlement and towards satisfying the decree.

10. In view of the above, I do not find any merit in this petition. The same is, therefore, dismissed.

11. Since the petitioner has already paid Rs.12,46,000/-, the same may be considered by the Executing Court towards part payment since the petitioner is a public body and such money is paid from the State exchequer.

12. The amounts of Rs.2,17,000/- and the amount of

Rs.10,00,000/- deposited in this Court pursuant to earlier orders of the Court, shall be transmitted to the Executing Court in Arbitration Darkhast No.122/2010, alongwith accrued interest, by the Registry of this Court. The decree holder is at liberty to request the Executing Court for the withdrawal of the said amount.

(Ravindra V.Ghuge, J.)