

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.546 OF 2017

M/s. Heera Construction Co.
A registered partnership with
office at Panaji, Goa,
Through its Power of Attorney Holder
Mr. K. Gopalan. ... Petitioner

V e r s u s

State of Goa,
represented by Executive Engineer,
Works Divisional II,
Water Resources Department,
Fatorda, Margao, Goa. ... Respondent

Mr. J. J. Mulgaonkar, Advocate for the Petitioner.

Ms. Amira Razaq, Additional Government Advocate for the
Respondent.

Coram :- C. V. BHADANG, J.

Date :- 19th July, 2019.

ORAL JUDGMENT

1. Rule, made returnable forthwith. Ms. Razaq, the learned Additional Government Advocate, waives service on behalf of the respondent. Heard finally by consent of parties.

2. By this petition, the petitioner is challenging the order dated 06.10.2005 passed by the Executing Court in Execution Application No.33/2004.

3. Before proceeding to consider the rival contentions, it is necessary to note the circumstances resulting into an order passed in the year 2005 being challenged in the year 2017. The petitioner had challenged the said order in First Appeal No.46/2006 on a misconception that it is a Decree which is amenable to challenge in an appeal. This Court dismissed the First Appeal on 01.03.2017 leaving it open to the petitioner, if so advised, to take recourse to the own remedies in accordance with law. It is thereafter that the present petition came to be filed on 04.05.2017. The delay, therefore, in my considered view, has been sufficiently explained.

4. The aforesaid Execution Application was filed by the petitioner for execution of an award dated 08.11.1997 passed by the Sole Arbitrator. The petitioners sought recovery of an amount of Rs.87,10,534.75 in the Execution Application. The respondent deposited an amount of Rs.52,10,109/- before the executing Court on 29.01.1998 which has been withdrawn by the petitioner after furnishing Bank Guarantee. The executing Court after noticing that the petitioner has admittedly withdrawn an amount of Rs.52,10,109/-, has found that in case the petitioner has any grievance that the deposit made by the respondent was conditional deposit, it is for the petitioner-

decree holder to take appropriate steps "to delete any conditions imposed" while depositing the amount.

5. It is difficult to see as to what the executing Court means by saying that the petitioner has to take steps for deleting any condition imposed while depositing the amount. The principal question in this case is whether on deposit of the amount of Rs.52,10,109/- by the respondent-judgment debtor, the interest as awarded by the Arbitrator would cease or not.

6. Mr. J. J. Mulgaonkar, the learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **PSL Ramanathan Chettiar & Ors. vs. ORMPRM Ramanathan Chettiar, AIR 1968 SC 1047**, to submit that the deposit of the amount was not unconditional and the petitioner was required to furnish Bank Guarantee for withdrawal of the amount and, in that view of the matter, the interest would not cease.

7. On the contrary, Ms. Razaq, the learned Additional Government Advocate for the respondent, has placed reliance on the decision of this Court in the case of **Bhadani Associates vs. Kamlini Dharamraj Ashar & Ors. 2017(3) Mh.L.J. 437**, in particular paras 20 and 21 thereof. On the

basis of the said judgment, it is contended that the interest as awarded by the learned Arbitrator would cease on deposit of the amount which was inclusive of the interest as on the date of deposit.

8. On hearing the learned Counsel for the parties and on perusal of records, I find that it would be appropriate that the executing Court reconsiders the issue as to whether the interest would cease on the respondent depositing the amount of Rs.52,10,109/- on 29.01.1998. The executing Court will have to look into the question, (i) whether the said deposit was made as a condition for stay or whether it was simpliciter a deposit in compliance with the award/decreed, (ii) whether the withdrawal of the amount by the petitioner was objected to on behalf of the respondent and whether the petition was required to furnish the Bank Guarantee while withdrawing the amount on account of the objections so raised, and (iii) whether the Bank Guarantee is still kept alive and if yes, till what date. The executing Court shall then decide the question whether the interest would cease on the deposit of the amount on 29.01.1998 or not, in the context of law laid down by the Hon'ble Supreme Court in the case of **PSL Ramanathan Chettiar** (supra) and the decision of this Court in the case of **Bhadani Associates** (supra).

9. In that view of the matter, the petition is partly allowed. The impugned order is hereby set aside. The Execution Application no.33 of 2004 is restored back to the file of the learned District Judge, South Goa, Margao, for disposal according to law in the light of the observations as made above.

10. Rival contentions of the parties are left open.

11. Rule is partly made absolute with no order as to costs.

12. Parties to appear before the executing Court on 09.08.2019 at 10.00 a.m.

C. V. BHADANG, J.

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