

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3883 OF 2020

THE CHIEF ENGINEER AND OTHERS
VERSUS
HULE CONSTRUCTION PVT LTD AND OTHERS

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Advocate for Petitioners : Shri Katneshwarkar P.R.
h/f Shri Fulfagar A.A.
Advocate for Respondent 1 : Shri Singh J.N.
AGP for Respondents 2 & 3 : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 11, 2020

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PER COURT :-

1. The petitioner - Chief Engineer and Chief Administrator, CADA, has preferred this petition for challenging the order dated 9.12.2019, passed by the learned Principal District Judge, below application Exhibit 5 in Misc. Civil Application No.53 of 2019. By the said order, Exhibit 5, seeking interim relief against the Arbitration Award dated 2.2.2019, has been allowed on the condition that the petitioner shall deposit the entire amount of Rs.10,54,54,600/- with 12 per cent interest from 12.6.2012, in the Court.

2. I have heard the submissions of the learned Advocates for the respective sides and have perused the impugned order.

3. Pursuant to the contract for a sum of total expenditure of

Rs.29,52,22,708/- and the commencement of the work in 17.11.2006, the petitioner has paid a total amount of Rs.29,28,99,409/-. Contention of the petitioner is that the Contractor himself has extended the period for completion of the work from 15.9.2009 till 11.3.2011 and completed only 80 per cent of the work of removal of silt throughout 19 minor irrigation tanks.

4. Though the learned Advocates have canvassed a host of factors, I find from the impugned order that the learned Principal District Judge has hardly touched the merits of the submissions and, in a single sentence, has stayed the execution of the award by directing the petitioner to deposit the entire award amount.

5. Section 34(5) and (6) of the Arbitration and Conciliation Act, 1996, reads as under:-

“Section 34. Application for setting aside arbitral awards.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

6. As such, the application challenging the arbitral award, which does not call for recording of oral evidence, has to be disposed off within one year from the date on which, the notice under sub-section (5) is served upon the parties. Such notice has been served upon the parties on 5.4.2019 and as such, the proceedings pending before the learned Principal District Judge will have to be decided as a mandate of law, on or before 5.4.2019.

7. The learned Advocate for the respondents has strenuously opposed this petition and submits that the Honourable Apex Court has held in M/s Tripathi and Company Vs. The Godavari Marathwada Irrigation Development Corporation in Special Leave to Appeal No. 13090 of 2017 and in the case of Manish Vs. Godavari Marathwada Irrigation Development Corporation in Special Leave to Appeal Nos. 11760-11761 of 2018, vide orders dated 23.4.2018 and 16.7.2018, respectively, that 100% amount shall be deposited as money decrees are involved.

8. However, in the said matters, when the Honourable Apex Court passed the said orders, the arbitral award was tested before the learned Principal District Judge and a judgment on merits was delivered. In the instant case, the District Court is yet to consider the proceedings on its merits.

9. I find from the impugned order that the learned Principal District Judge has reproduced the contentions of the parties and the case law cited, from paragraph Nos.1 to 7, in three pages. On the last page, in a single sentence, the trial Court has drawn its conclusions in paragraph No.8 as under:-

“8. Upon hearing the contentions of both parties, it is seen that it is necessary to hear the parties on merit and award being in the nature of money decree, as per the directions issued by the Honourable Supreme Court in the aforesaid cases, the entire award amount is to be directed to be deposited by the applicants, which may be withdrawn against the security by the original claimant.”

10. The Court below has not taken the efforts to deal with the rival contentions of the parties and did not consider Section 36(2) and (3), which read as under:-

“36. Enforcement.—

(1)

(2) *Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*

(3) *Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]”

11. I am unable to gather from the impugned order as to what were the contentions considered by the learned Court and as to what could be the reasons for which the said order has been passed. The lower Court lost sight of the fact that the orders of the Honourable Apex Court, as above, which it did not consider properly, were passed by the Honourable Apex Court after the proceedings filed by the State challenging the arbitral award, were tested on their merits.

12. Taking into account the above fact situation, I called upon the parties as to whether they would be filing their written notes of submissions on the merits of the matter pending before the trial Court, as well as, advance oral submissions, on 30th and 31st day of March, 2020. The learned Advocate for the petitioner submitted that as one year would be concluding by 5th April 2020, such written submissions can be filed and the Court below can close the proceedings for judgment on merits, on 31.3.2020.

13. At this juncture, the learned Advocates for the parties sought a pass over to take instructions.

14. After this matter was called out post lunch session, the learned Advocate for the petitioners submits, on instructions, that the view expressed by this Court in paragraph No.12 is acceptable. This Petition can be disposed off. Since the petitioners are unable to deposit any amount, it may be deemed that there is no interim relief.

15. The learned Advocate for respondent No.1 - Construction Company submits that the proceedings before the Trial Court would now be shifted to the Commercial Court. Presently, the learned Presiding Officer of the Commercial Court at Beed is under transfer orders. A new learned Judge would be appointed from June 2020 and this Court may grant a reasonable time to the Commercial Court to decide the present proceedings.

16. In view of the above, this petition is disposed off. Taking into account the statement of the petitioners that as they have no funds to deposit, it may be deemed that there is no interim relief.

17. Taking into account the information supplied by Shri Singh

learned Advocate, the litigating parties are at liberty to file their written notes of arguments in the pending proceedings in Misc. Civil Application No. 53 of 2019, on or before 30.06.2020. The final oral submissions shall be heard and the written notes shall be perused by the Trial Court and the matter would be closed for judgment on 30.06.2020. The learned Commercial Court shall deliver its judgment in the said proceedings on or before 31.08.2020.

(RAVINDRA V. GHUGE, J.)

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