

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**921 CIVIL APPLICATION NO.12288 OF 2019
IN
ARBITRATION APPEAL NO.9 OF 2018
WITH CA/13591/2018 IN ARBA/9/2018**

**M/S. NAVNIRMAN DEVELOPMENT CONSULTANT THROUGH ITS
DIRECTOR VARSHA ATUL DAWLE
VERSUS
THE ZILLA PARISHAD, AURANGABAD THROUGH ITS CHIEF EXECUTIVE
OFFICER, AURANGABAD**

...
Advocate for Applicant : Mr. Gawali Amol K.
Advocate for Respondent : Mr. G.K. Thigale (Naik)
...

CORAM : MANGESH S. PATIL, J.

DATE : 18.09.2020

PER COURT :

Heard both the sides. By this application, the applicant who is the original claimant is seeking withdrawal of the remaining amount of Rs.25,00,000/- which stands deposited in this Court pursuant to the order under challenge in this Appeal preferred by the respondent under Section 37 of the Arbitration and Conciliation Act.

2. Learned advocate Mr. Gawali for the applicant claimant submits that though this Court had permitted it to withdraw an amount of Rs.10,00,000/- by the order dated 29.03.2019, it was expected that the Arbitration Appeal itself would be heard expeditiously and it was fixed for hearing on 24.04.2019. For the reasons which cannot be attributed to the

applicant claimant the Appeal is still pending awaiting final disposal. In fact the applicant claimant had filed the dispute way back in the year 2010 and still awaiting for the fruits. If the Appeal is not going to be heard and decided finally in the near future he cannot be deprived of the amount which already stands deposited in this Court.

3. The learned advocate Mr. Gawali further submits that in few other matters this Court had followed such a course. Learned advocate further points out that in a similar matter which was carried to the Supreme Court arising out of a similar dispute, **Manish Vs. Godawari Marathawada Irrigation Development Corporation** in Special Leave to Appeal (C) Nos.11760-11761/2018, by the order dated 16.07.2018, the order of this Court directing only 60% of the amount to be withdrawn by the applicant claimant, the Supreme Court has holding it to be a money decree directed 100% of the amount to be deposited in the High Court and further allowed the claimant therein to withdraw it by furnishing security to the satisfaction of the Registrar of the High Court. Such a course should have been followed even in the matter in hand and the claimant now may be allowed to withdraw the remaining Rs.25,00,000/- which stand deposited in this Court.

4. The learned advocate Mr. Thigale for the respondent strongly opposes the application. He submits that there is a serious dispute as to the jurisdiction exercised by the District Court while passing the award since it is a commercial dispute having a specified value of more than Rs.1,00,00,000/- since there was a counter claim as well. Since the matter

was not transferred to the Commercial Court as is required by Section 15 of the Commercial Courts Act, 2015, the error goes to the root of the jurisdiction.

5. The learned advocate Mr. Thigale further submits that apart from the objection regarding jurisdiction which can be decided while deciding the appeal, even the relief being claimed now is in the form of a review of the earlier order whereby this Court had allowed the applicant claimant to withdraw Rs.10,00,000/- only. Going by the provision of Chapter XXX Rule 3 of the Bombay High Appellate Side Rules, the relief being claimed is in the nature of a review or modification of the order dated 29.03.2019 and the matter ought to be placed before the same judge.

6. Lastly the learned advocate Mr. Thigale submits that when this Court after due consideration has allowed the applicant claimant to withdraw Rs.10,00,000/- and the order has become final and even the applicant claimant having suffered it without any demur, there is no reason why once again the present claim should be entertained.

7. The learned advocate Mr. Gawali counters the ground regarding objection to the jurisdiction by submitting that as contemplated under Section 5 of the Section 15 of the Commercial Courts Act, the District Court could have been moved by either of the parties seeking transfer of the proceeding to the Commercial Court. But since no such step was ever taken by either of the parties, the question as to jurisdiction would not survive since the respondent has subjected himself to the jurisdiction of the District

Court.

8. Having considered the rival submissions at the out set it is necessary to note that the objection as to the jurisdiction is indeed a serious objection which will have to be gone into and decided while deciding the Appeal. No observations touching that aspect need to be made at this juncture.

9. The fact remains that the respondent has preferred this Appeal under Section 37. The applicant claimant is awaiting the fruits for last almost 10 years. Amount of Rs.35,00,000/- has already been deposited by the respondent in this Court and applicant claimant has been allowed to withdraw Rs.10,00,000/- by the order dated 29.03.2019.

10. At the first blush it does appear that the applicant claimant is seeking a modification of the order dated 29.03.2019 since now he is seeking withdrawal of the remaining amount as well. But then as has been rightly pointed out by learned advocate Mr. Gawali, perhaps, the amount of Rs.10,00,000/- was allowed to be withdrawn with a view that the Appeal itself could be heard expeditiously and was fixed for hearing on 24.04.2019. Obviously for whatever reason, the Appeal is still pending even after lapse of 1 ½ year. It is in view of such peculiar state of affairs that the applicant claimant seems to have become anxious to get back remaining money of Rs.25,00,000/-.

11. The applicant claimant is also seeking to rely upon the course followed by the Supreme Court in the case of Special Leave to Appeal (C)

Nos. 11760-11761/2018 dated 16.07.2018 whereby the direction of the High Court to the respondent defendant to deposit only 60% pending appeal under Section 37 was modified and instead the respondent defendant was directed to deposit 100% of the amount under award and even the claimant was allowed to withdraw the entire amount by furnishing solvent security.

12. Needless to state that the money stands deposited in this Court and is earning interest. If the applicant claimant has already been allowed to withdraw Rs.10,00,000/- out of the amount of Rs.35,00,000/- deposited, subjected to furnishing security and when the Appeal is not likely to be heard finally, it would be just and proper to allow him to withdraw the remaining amount of Rs.25,00,000/- by furnishing a solvent security which would secure the interest of the respondent defendant as well.

13. The application is allowed. The applicant is allowed to withdraw the balance amount of Rs.25,00,000/- with accrued interest by furnishing solvent security to the tune of Rs.15,00,000/- and a bank guarantee to the tune of Rs.10,00,000/-. The hearing of the Appeal is expedited.

14. The applicant claimant shall also undertake to refund the entire amount together with interest @ 6% per annum in this Court without delay in case the Appeal is allowed.

15. At this juncture the learned advocate Mr. Thigale submits that the operation of the order be stayed for a period of 4 weeks to enable the respondent to challenge it before the Supreme Court.

16. Since the amount is being allowed to be withdrawn by furnishing an undertaking together with a security and a bank guarantee, if and when the order is reversed the applicant claimant can be directed to deposit the money back into the Court. Therefore, there is no need to stay operation of the order and the request is rejected.

(MANGESH S. PATIL, J.)