

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION (ARBN) NO. 927 OF 2019

(Rajkumar Shah, Proprietor M/s. Raj & Raj Constructions, Pune.

Vs.

The State of Maharashtra Thr. Executive Director, VIDC, Nagpur & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Shahane, Advocate for the Applicant-Petitioner.
Shri V.G. Palshikar, Advocate for the Respondent Nos. 1 to 5.

CORAM: RAVINDRA V. GHUGE, J.

DATED : 28th January, 2020.

1. This matter was extensively heard on 24.01.2020 and was posted today to enable the petitioner to file an affidavit that if his matter is referred to the Superintending Engineer under Clause 30.1 of the agreement dated 23.03.2007, the petitioner would not raise any issue which is subjudice before the Trial Court in the following three pending suits and a writ petition pending before this Court:-

- a) R.C.S. No. 16/2019 at Bhandara.
- b) R.C.S. No. 103/2014 at Sangli.
- c) R.C.S. No. 28/2014 at Gondia.
- d) Writ Petition Stamp No. 20816/2019 at Nagpur.

2. An affidavit bearing Stamp No. 1298/2020 dated 27.01.2020, has been filed by Shri Shailesh Rajkumar Shah, who is the proprietor of the petitioner firm. The learned Advocate appearing on behalf of the

respondents vehemently opposes paragraph Nos. 1 & 2 of the said affidavit and makes a grievance that the petitioner has introduced paragraph Nos. 1 & 2 which is against what was expected by the Court. If that be so the respondents are willing to contest this matter on its merits. If paragraph Nos. 1 & 2 are deleted from the said affidavit and the petitioner sticks to paragraph No.3, the Superintending Engineer would exercise his jurisdiction under Clause 30.1 without interfering with any of the proceedings or causes of action pending in the above stated proceedings.

3. The learned Advocate for the petitioner submits that on instructions that paragraph Nos. 1 & 2 of the said affidavit shall stand deleted and he will stick to paragraph No.3.

4. Paragraph No.3 of the affidavit dated 27.01.2020 reads as under:

“3. The applicant undertakes that none of the issues which are under consideration between the applicant and third party involved in Special Civil Suit no 28/2014, before the Court of Civil Judge Senior Division Gondia shall be raised in the said proceedings.”

5. In view of above, this application is **disposed** off on the following grounds:-

a) The petitioner shall put forth a proper representation under Clause 30.1 before the Superintending Engineer of the Nagpur Irrigation

Circle situated at Nagpur, on 14.02.2020 at 12.00 noon. The petitioner would cause his appearance on the said date and time in person or through an authorized representative.

b) The petitioner shall be covered by the statement set out in the affidavit dated 27.01.2020, reproduced above.

c) The Superintending Engineer would make an endeavour to resolve the dispute / grievance raised by the petitioner and shall not deal with any issue as may be covered by any of the pending proceedings. For clarity, it be noted that the grievance of the petitioner would be purely restricted to his claim as against the respondents and would not involve any dispute that he may be involved in with any of the Sub Contractors.

6. In the event, the department desires certain documents to be produced by the petitioner, it would accordingly move an application before the Superintending Engineer and the petitioner would extend fullest co-operation in the said proceedings.

7. After affording reasonable opportunity to the parties, the Superintending Engineer would pass an appropriate order as is expected under Clause 30.1.

(Ravindra V. Ghuge, J.)