

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4268 OF 2021
IN
WRIT PETITION NO. 8804 OF 2018

M/S. S.D. SHINDE AND COMPANY THROUGH ITS PARTNER
VERSUS
GODAVARI MARATHWADA IRRIGATION DEVELOPMENT CORPORATION
THROUGH ITS EXECUTIVE DIRECTOR AND OTHERS

Mr.G.K. Naik Thigle, Advocate for the applicant.
Mr.P.R. Katneshwarkar, Advocate for the petitioner in WP.
Mr.B.R. Surwase, Advocate for respondent No.2 in WP.

CORAM : N.J.JAMADAR, J.
DATED : 08.04.2021

PC :-

01. The applicant Mr.Bapusaheb Shripati Shinde, seeks intervention in the petition filed by respondent No.3, assailing the order passed by the executing Court on 18th January, 2018 in Special Darkhast No.14 of 2010, whereby the executing Court disposed of the execution petition as fully satisfied.

02. The applicant avers that the applicant is a necessary party to this petition as the respondent No.3

is not adequately protecting the interest of M/s. S.B. Shinde and Company, a partnership firm, of which the applicant is a partner. In the application, the applicant has narrated the history of the proceedings initiated by respondent No.3 to execute the award passed by the Arbitrator, which eventually came to be confirmed by the Supreme Court in Special Leave Petition No.13876 of 2010, by order dated 22nd August, 2013, with certain modifications. The applicant avers that he had made efforts to get impleaded in the execution proceedings, however, those applications were rejected.

03. The applicant has filed a writ petition, being Writ Petition No.1315 of 2019, assailing the very same order passed by the executing Court, which is the subject matter of the instant petition as well as the order passed by the executing court on an application for impleadment [Exh.99], on 6th November, 2017. Initially, writ petition No.1315 of 2019 and instant writ petition [writ petition No.8804 of 2018] were tagged together. By

order dated 15th February, 2021, the instant writ petition was directed to be de-tagged and listed separately for hearing. The writ petition No.1315 of 2019 preferred by the applicant herein was also directed to be listed and heard separately.

04. Mr. Naik, learned Counsel for the applicant took the Court through various proceedings especially as regards the endeavour made by the applicant to get himself impleaded as a party in the execution petition filed by respondent No.3 Annasaheb to execute the award.

05. It would be suffice to note that, at this stage and in the instant application, the Court is not required to delve into the underlying controversy in the execution petition. The question is restricted to the entitlement of the applicant to intervene in the instant petition.

06. Mr. Naik, learned Counsel for the applicant urged that though the applicant could not have sought the

relief of payment of entire decretal amount in the previous application for intervention, yet, in view of the admission on the part of respondent No.3 that the respondent is liable to pay income tax and the partnership firm would not be required to pay the income tax, the intervention of the applicant to the limited extent of the liability to pay income tax amount receivable towards the encashed bank guarantee and security deposit, would be necessary for a just decision of the petition.

07. A brief historical backdrop as regards the endeavour of the applicant to intervene in the execution petition, would be apposite. Initially, the applicant had preferred application [Exh.56] in the Special Darkhast No. 14 of 2010. By an order dated 19th August, 2015, the said application came to be rejected by the executing Court opining that the applicant has no locus standi. It was, inter alia, observed that the said issue was decided in Civil Revision Application by the High

Court. The applicant challenged the said order in Writ Petition No.1691 of 2016. By an order dated 25th August, 2016, the writ petition came to be disposed of holding that the executing Court had not committed any error. This Court had, inter alia, observed that if the applicant desired to prosecute the claim restricted to the encashment of bank guarantee and security deposit, the applicant ought to have instituted appropriate proceeding before the appropriate forum. The applicant preferred another application [Exh.99] before the executing Court. By order dated 6th November, 2017, the executing Court was again persuaded to reject the said application. The applicant has challenged the order passed by the executing Court on the said application [Exh.99] as well as the final order in the execution petition, [which is impugned in this petition] by filing writ petition No.1315 of 2019.

08. The situation which thus obtains is that two endeavours made by the applicant to get himself impleaded

in the execution petition were negatived by the executing Court. This Court, in Writ Petition No.1691 of 2016, repelled the challenge to the rejection of the first application for intervention [Exh.56]. From the own showing of the applicant, the rejection on the second occasion [Exh.99] is the subject matter of challenge in Writ Petition No.1315 of 2019.

09. In the aforesaid view of the matter, the application, which proceeds on the premise that the de-tagging of the Petition No.1315 of 2019 from the instant petition, necessitates the intervention of the applicant in the instant petition, is misconceived. Since the endeavour of the applicant to intervene in the execution petition, the final order in which is impugned in this petition, was negatived by the executing Court and the said order was affirmed by this Court in Writ Petition No.1691 of 2016, the applicant is precluded from again seeking intervention in the instant petition. In any event, the applicant has filed a substantive writ

petition assailing the order, which is impugned in this petition, as well as rejection of his application for intervention [Exh.99] in Execution Petition No.14 of 2010. Thus, the applicant has an adequate opportunity to agitate the grievance, which the applicant desires to agitate by intervening in the instant petition. It cannot be said that the Court would not be in a position to modulate the reliefs in the event the applicant succeeds in Writ Petition No.1315 of 2019. Thus, the application for intervention does not merit acceptance. Hence, the following order :-

O R D E R

The application for intervention stands dismissed.

The writ petition be listed for hearing on 11.06.2021.

[N.J.JAMADAR,J.]