

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

**927 WRIT PETITION NO.6434 OF 2021**

**GENERAL MANAGER SOUTH CENTRAL RAILWAY THROUGH SENIOR  
DIVISIONAL ENGINEER  
VERSUS  
JAGANNATH GOVINDRAO PHULARE**

...  
Standing Counsel for Petitioner (U.O.I.) : Mr.Deshpande Sanjeev B.  
Advocate for Respondent : Mr.G.K.Thigale (Naik)  
...

**CORAM : SANDEEP K. SHINDE , J.**

Date :- 15<sup>th</sup> June, 2021.

**P. C. :**

1. Heard the learned counsel for the parties.
2. Aggrieved by the award, dated 28th December, 2018 passed by the learned Sole Arbitrator, petitioner instituted the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act' for short) being Civil M.A. No. 173 of 2019, in the Court of the 7th Adhoc District Judge, Aurangabad. An application under Section 36 (2) of the Act was also moved, seeking stay to the execution of the impugned award. Pending application, award was put to the execution, whereafter, the Extra Joint District Judge, Aurangabad, issued attachment-cum-recovery warrant on 17th March, 2021. The petitioner being aggrieved by the order dated 17th March, 2021 has invoked the writ jurisdiction of this Court, under Article 227 of the Constitution of India.
3. The order dated 10th June, 2021 passed by this Court

shows, petitioner was willing to deposit 7,00,00,000/- as a goodwill gesture, against the award, for Rs. 22.98 Crores.

4. The learned counsel for the petitioner would submit that once the application under Section 36 (2) of the Act was moved, propriety demands, the concerned Court would decide the application expeditiously on merits and may or may not, stay the operation of the award by recording the reasons in writing. It is therefore, submitted that since the application has not been decided nearly for two years, the District Court ought not to have ventured to issue of attachment order without first deciding the application. On these grounds petitioner assails impugned order dated 17.03.2021.

5. Mr. Thigale, learned counsel for the respondent, would submit that neither an application under Section 34 of the Act nor an application seeking stay to the execution of the award were filed within prescribed time. He would submit petitioners had not filed an application for condonation of delay along with an application filed under Section 34 of the Act. It is therefore submitted that, the order passed by the executing Court issuing attachment-cum-recovery of award cannot be faulted with. Mr. Deshpande, learned counsel for the applicant would dispute this fact and submit that proceedings under Section 34 of the Act were instituted in time.

6. Be that as it may, I have considered the submissions of the

learned counsel for the parties.

7. By keeping all the contentions including jurisdictional issues, open as raised, by Mr. Thigale, the learned counsel for the respondent, in my view, the ends of justice would meet, if the parties are directed to cause their appearance before the learned District Court on 20<sup>th</sup> July, 2021 at 11.00 a.m. However, well before that the petitioner shall deposit Rs. 7,00,00,000/- with Nazar of the District Court in Civil Misc. application No. 173 of 2019.

8. Once parties cause their appearances on 20<sup>th</sup> July, 2021 the learned District Court shall schedule the hearing of the stay application as per its convenience and ensure that application filed under Section 36 (2) of the Act, is decided on its own merits, preferably on or before 30<sup>th</sup> September, 2021.

9. It is made clear that all the contentions of the parties are expressly kept open, as this Court has not heard the parties on merit. Learned counsel for the parties assure this Court that, parties shall not seek unnecessary adjournments. It is accepted as undertaking to this Court.

10. In view of the order passed herein above, the order dated 17<sup>th</sup> March, 2021, in R.D. No. (Arbitration) 1010 of 2019, is kept in

abeyance, till disposal of the stay application preferred by the petitioner herein.

11. It is made clear that, time shall not be extended for depositing Rs. 7,00,00,000/-.

12. The petition is disposed of in aforesaid terms.

**( SANDEEP K. SHINDE )**  
**JUDGE**

mahajansb/