

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.696 OF 2019

IN

ARBITRATION APPEAL NO.9 OF 2020

The State of Maharashtra Water
Resources Department
thru the Executive Engineer

...Applicant/
Appellant

Versus

Patel Engineering Ltd. & Ors.

...Respondents

WITH

INTERIM APPLICATION NO.297 OF 2019

IN

ARBITRATION APPEAL NO.12 OF 2020

The State of Maharashtra Water
Resources Department
thru the Executive Engineer

...Applicant/
Appellant

Versus

Patel Engineering Ltd. & Ors.

...Respondents

WITH

INTERIM APPLICATION NO.697 OF 2019

IN

ARBITRATION APPEAL NO.11 OF 2020

The State of Maharashtra Water
Resources Department
thru the Executive Engineer

...Applicant/
Appellant

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Versus

Patel Engineering Ltd. & Ors.

...Respondents

WITH
INTERIM APPLICATION NO.699 OF 2019
IN
ARBITRATION APPEAL NO.8 OF 2020

The State of Maharashtra Water
Resources Department
thru the Executive Engineer

...Applicant/
Appellant

Versus

Patel Engineering Ltd. & Ors.

...Respondents

WITH
INTERIM APPLICATION NO.701 OF 2019
IN
ARBITRATION APPEAL NO.10 OF 2020

The State of Maharashtra Water
Resources Department
thru the Executive Engineer

...Applicant/
Appellant

Versus

Patel Engineering Ltd. & Ors.

...Respondents

Mr. S.A. Ahmed, Special Counsel for State with Smt. Tanaya
Goswami, AGP for State.

Mr. Mustafa Doctor, Senior Advocate with Nishi Bhankharia
and Ms. Ritika Ajitsaria i/by Trilegal for Respondents.

CORAM : R.I. CHAGLA J.

DATE : 16 NOVEMBER 2021

ORDER :

1. Heard learned Counsel for the parties.
2. The all Arbitration Appeals have been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (“**the Act**”). The Interim Applications have been taken out in these Arbitration Appeals for stay of the execution/implementation of the Awards/Judgments passed by the Arbitral Panel till the hearing and final disposal of the Arbitration Appeals.
3. The Arbitration Appeal No. 9 of 2020 challenges the judgment dated 21st January 2019 passed in Civil (Arbitration) M.A. No. 216 of 2009 by the Court of District Judge-1, Satara at Satara by which the Court had dismissed the Application filed under Section 34 of the Act and upheld the three Awards dated 29th February 2008.
4. By these three Awards, the Arbitral Tribunal had awarded a total sum of Rs. 1,68,44,16,084/- which comprised of

the principal Award amount plus pre-reference plus pendente lite interest.

5. From the judgment dated 21st January 2019 passed by the District Judge-1, Satara, the Arbitration Appeal No. 9 of 2020 has been filed under Section 37 of the Act.

6. The other Arbitration Appeal No. 8 of 2020; Arbitration Appeal No. 10 of 2020; Arbitration Appeal No. 11 of 2020 and Arbitration Appeal No. 12 of 2020 have challenged the judgments dated 21st January 2019 which have been passed in the respective Civil (Arbitration) Miscellaneous Applications being Civil (Arbitration) M.A. No. 168 of 2013; Civil (Arbitration) M.A. No. 181 of 2012; Civil (Arbitration) M.A. No. 262 of 2009 and Civil (Arbitration) M.A. No. 1 of 2011. The said Civil (Arbitration) Miscellaneous Applications were dismissed and the Awards dated 14th April 2013, 22nd April 2012, 4th September 2009 and 10th January 2011 were upheld in favour of the Respondents herein.

7. The total amount that had been awarded in respect

of these four Awards being Award Nos. 4, 5, 6 and 7 is a sum of Rs. 1,22,09,37,689/- which comprises of the principal Award amount plus pre-reference plus pendente lite interest.

8. The learned Counsel appearing for the Appellant in the above Arbitration Petitions filed under Section 37 of the Act has submitted that the judgment dated 21st January 2019 passed by the District Judge-1, Satara is the same judgment passed in all the Civil (Arbitration) Miscellaneous Applications which had been referred before the Court. He has submitted that in view of there being one judgment, the amount of Rs. 100/- Crore deposited by the Appellant on 27th January 2009 in only Civil (Arbitration) M.A. No. 216 of 2009 filed under Section 34 of the Act challenging the Award Nos. 1, 2 and 3 dated 29th February 2008. He has submitted that in respect of the other four Civil (Arbitration) Miscellaneous Applications challenging the four Awards being Award Nos. 4, 5, 6 and 7 there were no amounts deposited and/or directed to be deposited. He has submitted that in view of the judgment dated 21st January 2019 being the same in each of the Civil (Arbitration) Miscellaneous Applications passed by the District Judge-1, Satara, further amount should not be directed to be

deposited in respect of the Appeals filed by the Appellant.

9. The learned Counsel for the Appellant has relied upon the decision of the Supreme Court in **Malwa Strips Private Limited Vs. Jyoti Limited**¹, in particularly paragraph 14 thereof in support of his submission that the undue hardship will be caused to the Appellant in depositing the entire sums awarded which Awards are nothing but a money decree. Particularly, considering that the Appellant is the Government depositing the amount which should be taken into consideration by this Court.

10. The learned Senior Counsel appearing for the Respondents has submitted that Section 37 Appeal stands on a higher footing than the Petition under Section 34 of the Act whilst considering the deposit of the amounts awarded, particularly, considering that the Awards have been upheld by the Satara Court in the Section 34 Petitions. He has relied upon the decision of the Supreme Court in **Manish Vs. Godawari Marathwada Irrigation Development Corporation**², wherein the

1 (2009)2 SCC 426

2 SLP 11760-11761/2018 Order dated 26.09.2018

Supreme Court has set aside the impugned order passed by this Court which had ordered 60% deposit, pending the Section 37 appeal. The Supreme Court had relied upon its own orders which clearly held that since these are money decrees, there should be 100% deposit, with the Respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court. Accordingly, the Supreme Court had mandated a 100% deposit be made.

11. Learned Senior Counsel appearing for the Respondent has thereafter, relied upon the decision of the Supreme Court in **Pam Developments Private Limited Vs. State of West Bengal**³ which has held that Section 36 of the Act does not provide for any special treatment to the Government while dealing with grant of stay in an application under proceedings of Section 34 of the Act. Further, Section 18 of the Act provides for equal treatment of parties. Thus, it is clear that there is no exceptional treatment to be given to the Government while considering the Application for stay under Section 36 of the Act filed by the Government in proceeding under Section 34 of the Act.

3 (2019)8 SCC 112

12. Learned Senior Counsel for the Respondents submits that the above finding in **Pam Developments Private Limited** (supra) would apply to an Appeal preferred by the Government under Section 37 of the Act. The Government cannot be afforded any special treatment whilst dealing with grant of stay of the judgments passed under Section 34 of the Act. The Government should be treated equally as other non-Government entities.

13. The learned Senior Counsel for the Respondents has dealt with the decision of the Supreme Court which had been relied upon by the learned Counsel for the Appellant viz. **Malwa Strips Private Limited** (supra) to contend that the Supreme Court in that case was considering the hardship to the Respondent in connection with direct payment of the decretal amount or a part of it and/or directly through the judgment debtor to secure the payment of the decretal amount. In that context, the Supreme Court has held that a strong case should be made out for passing an order of stay of execution of the decree in its entirety.

14. Having considered these submissions, it is

well settled by the Supreme Court as held in **Manish** (supra) that in case where the Awards are nothing but money decrees there should be 100% deposit, with the Respondent being entitled to withdraw the amount deposited by furnishing solvent security to the satisfaction of the Court.

15. In the present case, the Awards which have been passed are nothing, but the money decrees whereby the Respondent has been awarded their claim for monies due and payable to them under the respective contracts with the Appellant.

16. It is further clear from the decision of the Supreme Court in **Pam Developments Private Limited** (supra) that the Government cannot be given any special treatment while dealing with the grant of stay in an Application under Section 34 of the Act. There shall be equal treatment given to the parties and no exceptional treatment can be given to the Government while considering the Application for stay under Section 36 filed by the Government under Section 34 of the Act. This would equally apply to an Application for stay of judgments under Section 34 of the Act in an Appeal filed under

Section 37 of the Act.

17. In view of the Arbitration Appeal having been filed in respect of the judgments in the five Civil (Arbitration) Miscellaneous Applications which have been referred to above, the judgments dated 21st January 2019 cannot be considered as a single judgment and would necessarily have to be considered as judgments in each of the Civil (Arbitration) Miscellaneous Applications. The District Judge-1, Satara had also thereafter modified the said judgments to refer to the Volumes in each of the Applications under Section 34 of the Act. Further, there are five Appeals filed by the Appellant treating the judgments bearing the same date i.e. 21st January 2019 as separate judgments disposing of the Applications under Section 34 of the Act.

18. It is to be noted that the total amount which has been awarded comprises of the principal Award amount under the respective Awards along with the pre-reference interest and pendente lite interest comes to an Award of Rs. 2,90,53,53,773/-. Considering the fact that the amount of Rs. 100/- Crores has been deposited by the Appellant on 27th

January 2009, the balance amount of Rs. 1,90,53,53,773/- will be required to be deposited pending the Arbitration Appeals under Section 37 of the Act. Hence, the following order :-

- (i) The Appellant shall deposit the sum of Rs. 1,90,53,53,773/- with the Registrar Judicial -I of this Court within a period of six weeks from the date of this order.
- (ii) Upon deposit having been made by the Appellant of the sum of Rs. 1,90,53,53,773/-, the Respondents shall be at liberty to withdraw the said amount deposited upon furnishing solvent security to the satisfaction of the Registrar Judicial -I of this Court.
- (iii) The execution/implementation of the Awards/ Judgments by the Arbitral Tribunal is stayed pending the hearing of the Arbitration Appeals subject to the direction of deposit of the said sum with the Registrar Judicial -I of this Court having

been complied with by the Appellants.

(iv) The Interim Applications are disposed of in the above terms.

[R.I. CHAGLA J.]