

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

ARBITRATION APPEAL NO. 11 OF 2021

(National Highways Authority of India ..vs.. The Additional Commissioner, Nagpur and Arbitrator
under the NHA, 1956 and others)

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

Court's or Judge's orders

Mr. A.A. Kathane, Counsel for the appellant,
Mr. G.A. Kunte, Counsel for respondent 3.

CORAM : ROHIT B. DEO, J.

DATED : 03-09-2021

This appeal is directed against the order dated 12-3-2021 rendered by the learned Principal District Judge, Nagpur in Civil Miscellaneous Application 825/2019, to the extent that while allowing the application seeking stay to the operation and execution of the arbitral award dated 08-7-2019, the learned Principal District Judge was pleased to direct the applicant-the appellant herein to deposit 50% amount of the compensation granted by the arbitrator on all components.

2. The learned Counsel for the appellant submits that Rule 3(b) of the National Highways (Manner of Depositing the Amount by the Central Government; Making Requisite Funds Available to the Component Authority for Acquisition of Land) Rules, 2019 ("Rules, 2019" for short) is a fetter on the discretion of the Court deciding an application for grant of stay, to direct the

National Highway Authority of India (NHAI) to deposit the enhanced compensation or part thereof.

3. In my considered view, the submission deserves to be noted only for rejection.

4. Pertinently, the appellant, who shall be hereinafter referred to as the NHAI, sought stay to the operation and execution of the arbitral award dated 08-7-2019 invoking the provisions of sub-section (2) and sub-section (3) of Section 36 of the Arbitration and Conciliation Act, 1996 ("Act" for short). In the entire application, there is not even a whisper, and in my view rightly, to Rule 3(b) of the Rules, 2019. Section 36 of the Act reads thus -

"36. Enforcement--(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral

award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]”

5. The mandate of sub-section (3) of Section 36 of the Act is clear. The Court, is obligated to have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (“CPC” for short), if stay is sought to payment of money. The general power of the Court extends to imposing conditions as the Court may deem fit for granting stay, and if the award is for payment of money, then the conditions envisaged in CPC are to govern the exercise of discretion.

6. The submission that Rule 3(b) of the Rules, 2019 creates an embargo on the power of the Court to impose condition that amount or part thereof be deposited as a condition for grant of stay, is noted only as a courtesy to Mr. A.A. Kathane.

7. The rule invoked has absolutely nothing to do with the consideration of conditions for granting stay to an arbitral award.

8. In the interest of observing restraint, no further observation is made.

9. The appeal is dismissed.

JUDGE

adgokar