IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.29334 of 2022

In the matter of an application under Articles 226 & 227 of the Constitution of India.

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National Insurance Company Ltd., Kolkata	….	**Petitioner**

-versus-

Seagold Overseas Pvt., Ltd., BBSR & Others	….	**Opposite Parties**

For Petitioner	:	M/s. D.K.Patra, J.R.Deo, A.K.Das & P.K.Samal.
For Opp. Parties	:	M/s.M.Agarwal & G.Mohanty

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:17.11.2022 and Date of Judgment: 25.11.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. Goutam Mishra, learned Sr. Counsel appearing for the Petitioner and Mr. Mohit Agrawal, learned counsel appearing for the Opposite Parties.

3. The affidavit filed by the Opposite Parties in Court be kept on record.

4. The present Writ Petition has been filed by the Petitioner- National Insurance Company Ltd., Kolkata (in short 'Company'), challenging the order dated 18.10.2022 passed by the learned Commercial Court, Cuttack in Arbitration Petition No.11/2020.

5. It is the submission of the learned Senior Counsel appearing for the Petitioner-Company that challenging the award passed by the learned Arbitrator vide award dated 6.3.2020, the Petitioner-Company filed Arbitration Petition No.11/2020 under Section-34 of the Arbitration and Conciliation Act, 1996. Similarly, the Opposite Parties challenging the said award dated 6.3.2020 has also filed another application vide Arbitration Petition No.13/2020 and both the proceedings are pending before the learned Commercial Court, Cuttack. After filing of the petition by the company in Arbitration Petition No.11/2020, when the company filed a petition to stay the award passed by the learned Arbitrator, learned Commercial Court while considering such petition for stay passed an order on 05.04.2021, wherein the operation of the award was stayed subject to deposit of the award amount of Rs.96,09,117/- by the Petitioner. Pursuant to such order passed on 05.04.2021, the Petitioner-Company also deposited the entire amount through treasury challan on 19.05.2021. After such deposit of the award amount by the Petitioner-Company, the Opposite Parties filed an application on 17.09.2021 under Order-41, Rule-6 of C.P.C before the learned Commercial Court with a prayer to permit the opposite party to withdraw the decreetal dues of Rs. 96,09,117/- vide Annexure-1. The Petitioner-Company though filed a detailed objection and with a prayer not to permit the opposite party to withdraw the amount so deposited by the Petitioner during pendency of the proceeding, but learned Commercial Court without considering the said objection in its proper perspective passed the impugned order on 18.10.2022 under Annexure-3 by permitting the opposite party to withdraw the award amount so deposited by the Petitioner-Company subject to the opposite party furnishing a Bank guarantee of a Nationalized Bank for the like amount.

6. Learned Senior Counsel vehemently contended that since both the parties have challenged the award passed by the learned Arbitrator, learned Commercial Court should not have allowed the opposite party to withdraw the award amount subject to furnishing a Bank guarantee for the like amount. It was also contended that the opposite party prior to filing of the petition under Annexure-1 filed another petition under Section-340 Cr.P.C and prior to disposal of the same, the petition under Annexure-1 was filed.

7. It is contended that the opposite party in order to delay the disposal of the main matter is filing different petitions and the Petitioner-Company though in its objection raised all those valid points, but the learned Court below without proper appreciation of the said grounds passed the impugned order under Annexure-3 by permitting the opposite party to withdraw the amount by furnishing the Bank guarantee.

8. It is also contended that during pendency of the petition, if the award amount will be allowed to be withdrawn by the opposite party, in case the Petitioner-Company succeeds in the matter, the Petitioner will have no remedy to recover the dues from the opposite party who has got no tangible assets.

9. It is also contended that even though the matter is pending since 2020, learned Court below is not passing any order by calling for the L.C.R and thereby delaying the disposal of both the matters filed at the behest of the petitioner and the opposite party. Accordingly, it is contended that the impugned order is liable for interference of this Court.

10. Mr. Agarwal, learned counsel appearing for the opposite party on the other hand made his submission that learned Court below taking into account the decision of the Hon'ble Apex Court passed in the case of ***Manish vs. Godawari Marathawada Irrigation Development Corporation*** has rightly passed the order impugned and there is no illegality or irregularity in the said order.

11. It is contended that the Hon'ble Apex Court in the aforesaid cited decision has clearly held that in case of similar nature, the respondents will be entitled to withdraw the amount deposited by furnishing solvent security to the satisfaction of the Court.

12. Mr. Agarwal also relied on another decision of the Hon'ble High Court of Gujurat passed in the case ***Manibhai and Brothers vs. Birla Cellulosic*** reported in ***2016 SCC Online Gujurat-1084.*** In paragraph-26 of the said judgment it is held as follows:-

> ***"****26. It is a well-settled principle of law that a money decree ordinarily should not be stayed. Rule 5 of Order XLI of the Code provides for stay of execution of a decree and provides for a condition that the judgment-debtor should furnish security for performance thereof. However, the decree-holder is then deprived of the benefit of the fruits of the decree during the pendency of the*

> *appeal. Therefore, as a principle of prudence, presumably to ensure that the decree-holder is not deprived of the fruits of stay having been granted under Rule 5 of Order XLI, the courts have evolved a principle which is very much in consonance with section 151 of the Code, whereby the decree-holder is permitted to withdraw the amount subject to furnishing security in respect thereof. As held by the Supreme Court in P.S.L. Ramanathan Chettlar v. O.R.M.P.R.M. Ramanathan Chettiar (supra), on a judgment-debtor's depositing a sum in the court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. The real effect of deposit of money in court is to put the money beyond the reach of the parties pending disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor. Therefore, withdrawal of the amount deposited by the judgment-debtor by the decree-holder on furnishing security appears to be a well-settled practice."*

Similarly, Mr. Agarwal also relied on another decision of the Hon'ble High Court of Bombay reported in **2021 SCC Online Bombary-12596**. In the said decision, Hon'ble High Court in Para-14 has held as follows:-

> ***"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".*

13. Relying on the decisions as cited (supra), learned counsel appearing for the opposite party contended that in view of the ratio decided by the Hon'ble Apex Court in the case of ***Manish*** as cited (supra). Learned Commercial court has rightly allowed the opposite party to withdraw the deposited award amount by furnishing Bank guarantee of the like amount.

14. It is also contended that pursuant to the said order, the opposite party is ready to furnish the Bank Guarantee for an amount of Rs.96,09,117/- from Bank of India, Main Branch, Bhubaneswar. The opposite party in the affidavit filed in Court today also submitted about the aforesaid facts in Para-2 of the affidavit. To the aforesaid submissions of Mr. Agarwalla, learned Senior Counsel appearing for the Petitioner-Company though did not dispute the ratio decided by the Hon'ble Apex Court in the case of ***Manish,*** but submitted that since the matter is pending before the learned Commercial Court for the last two years, learned Commercial Court be directed to dispose of both the petitions in Arbitration Petition No.11 of 2020 & Arbitration Petition No.13 of 2022 within a stipulated time and no prejudice will be caused to either of the parties if both the proceedings are disposed of within the time to be stipulated by this Court.

15. Mr. Mishra, also expressed his apprehension that the opposite party if will be allowed to withdraw the amount by furnishing bank guarantee, the Petitioner-Company will face immense difficulty to realize the said amount in case the Petitioner succeeds in Arbitration Petition No.11/2020.

16. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that learned Commercial Court while allowing the prayer of the Opposite Parties vide the impugned order dated 18.10.2022 has followed the ratio decided by the Hon'ble Apex Court in the case of ***Manish.*** This Court finds that Hon'ble Apex Court in the said decision has clearly held that the respondents will be entitled to withdraw the amount deposited by furnishing solvent security to the satisfaction of the concerned court. The aforesaid decision of the Hon'ble Apex Court has also been followed by the High Court of Bombay in the decision reported in ***2021 SCC Online Bombay- 12596*** and by the Hon'ble High Court of Gujurat ***reported in 2016 SCC Online Gujurat-1084.***

17. Therefore, after going through the aforesaid decisions, more particularly the decision passed by the Hon'ble Apex Court in the case of ***Manish***, this Court finds no illegality or irregularity with regard to the impugned order passed by the learned Commercial Court under Annexure-3. Therefore, this Court is not inclined to interfere with the said order. However, taking into account the submissions made by the learned counsel for both the Parties that the learned Commercial Court be directed to dispose of both the petitions filed in Arbitration Petition No.11 of 2020 and Arbitration Petition No.13 of 2020 within a stipulated time with an undertaking that neither of the parties will pray for any adjournment for such disposal of the matter, this Court directs the learned Commercial Court, Cuttack to make all endeavor and dispose of both the proceedings in Arbitration Petition No.11 of 2020 and Arbitration Petition No.13 of 2020 within a period of three months from the date of receipt of this order if there is no other legal impediment. Taking into account the undertaking given by the learned counsel for the Parties, this Court also observes that learned Court below shall not allow any adjournment to either of the parties and proceed in the matter by calling for the LCR without any further delay. Learned Court below shall also see that the Bank guarantee furnished by the opposite party be an unconditional one and the said bank guarantee should be furnished as undertaken from Bank of India, Main Branch, Bhubaneswar.

18. With the aforesaid observations and directions, the W.P.(C) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 25th of November, 2022/Subrat (Sr. Steno)