

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

CIVIL APPLICATION NO.9622 OF 2022
IN COMAP/9/2019 WITH CA/3135/2021 IN COMAP/9/2019

M/S GURUNANAK INDUSTRIES THR ITS AUTHORIZED
SIGNATORY KHUSHBIRSINGH BASANTSINGH BINDRA
VERSUS
EXECUTIVE DIRECTOR G M I D C SINCHAN BHAVAN
AND ORS

...

Advocate for the Applicant : Shri Bhandari Anand P.
Advocate for the Respondent/GMIDC : Shri S.G. Bhalerao
AGP for the Respondents/ State : Shri S.G. Sangle

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**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 11th November, 2022

Per Court :-

1. The applicant prays for withdrawal of the deposited amount.
2. We have considered the submissions of the learned advocate for the applicant and the learned advocate representing the original appellant/GMIDC, who has strenuously opposed this application. The contention on behalf of the GMIDC is that the applicant is not entitled to a single rupee out of the amount that is deposited.

3. We have perused the order passed by this Court (Coram : Prasanna B. Varale (as His Lordship then was) and Anil S. Kilor, JJ), dated 11.11.2019 in Commercial Appeal No.9/2019. The directions issued by this Court are at paragraphs 4 to 9, which read thus:-

- “4. *The primary submission of the learned Counsel appearing for the appellants is, the work was awarded to the contractor. The estimated cost of the work was to the tune of Rs. 2,80,25,309/-. The stipulation period to complete the work was of 24 months. It was then submitted by the learned Counsel for the appellants that in spite of completing the work in stipulated period, the work was completed after 16 years, and an amount of Rs. 18, 17,52, 125/- was already paid to the contractor, but on a grievance of unsatisfied claim, the contractor had approached the learned District Judge-1, Jalna by filing suit.*
5. *It is the submission of learned Counsel for appellants that without considering the facts in its proper perspective including an enormous delay caused in completion of the work giving a total go-by to the stipulation of the period under the terms of contract, the learned Court below decreed the suit mechanically. It is then submitted before this Court that the respondent had filed the execution proceedings and the same is pending before the competent Court.*
6. *Issue notice to the respondents.*
7. *Mr.Bhandari, learned Counsel waives notice for the respondent No. 1 and prays for some time to seek instructions and submit reply to the appeal. In our opinion, the issue raised in the appeal required consideration. The appeal admits. The perusal of documents further show*

that the respondent-contractor claimed an amount of price escalation to the tune of Rs. 10,02,91,808/- and out of that, already an amount of five crores and odd is paid to the contractor and his claim was for the remaining amount to the tune of Rs.5,76,25,112/- .

8. *On the backdrop of above fact situation, we direct the appellant to deposit 25% of the amount of Rs. 5,76,25,112/- in this Court within a period of 8 weeks from today. Needless to state that in case the respondent has a reason to seek withdrawal of the amount, he may approach this Court for approval of those withdrawal.*
9. *The amount if so deposited in this Court within the stipulated period, be invested in Fixed Deposit in the nationalized bank initially, for a period of three years.”*

4. It is thus, apparent that out of the total price escalation of Rs.10,02,91,808/- granted by the Commercial Court, an amount of Rs.5 crores and odd was paid to the applicant. His remainder claim was for an amount of Rs.5,76,25,112/- as on 11.11.2019 along with interest at the rate of 15% per annum. 25% of this amount to the tune of Rs.1,44,06,278/- has been deposited by the GMIDC in this Court. 75% of the remainder is still with the GMIDC.

5. In the facts and circumstances recorded above, this Civil Application is allowed in terms of prayer clause B, which reads as under:-

“B) Applicant be permitted to withdraw the amount of Rs.1,44,06,278/- deposited by the respondents with accrued interest thereon.”

6. Needless to state, such withdrawal would be subject to the result of the pending appeal.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)