

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

924 WRIT PETITION NO.8542 OF 2022

THE STATE OF MAHARASHTRA
VERSUS
JAYKUMAR FULCHAND AJMERA

Shri. P. K. Lakhotiya, AGP for the petitioner/State
Shri. G. K. Naik Thigle, Advocate for the respondent

AND

934 WRIT PETITION NO. 8714 OF 2022

M/S JAYKUMAR FULCHAND AJMERA THROUGH ITS AUTHORIZED
PERSON RAJKUMAR JAYKUMAR AJMERA
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

Shri. G. K. Naik Thigle, Advocate for the petitioner
Shri. P. K. Lakhotiya, AGP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 24th AUGUST, 2022**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of parties heard finally at the stage of admission.
2. The petitioner, by this petition under Article 227 of the Constitution of India, is challenging the order passed by the District Judge-2, Aurangabad in Civil M.A. No. 217 of 2020 under

Section 34 of the Arbitration and Conciliation Act, 1996 (The Arbitration Act) whereby application Exhibit 44 for withdrawal of the amount has been partly allowed by the learned District Judge-2, Aurangabad. 60% amount of Rs.32,62,48,730/- i.e. 22,80,79,435/- was deposited on the order of this Court in Writ Petition No. 8266 of 2021. Out of this amount the learned District Judge-2 directed withdrawal of 50% of the amount on personal undertaking. Against this order both the appellant before the District Judge-2 and respondent before the District Judge-2 preferred writ petitions. Writ Petition No. 8542 of 2022 is preferred by the State of Maharashtra whereas Writ Petition No. 8714 of 2022 is preferred by the respondent before the District Court.

3. Learned counsel Shri. Thigle submits that the learned District Judge-2 allowed to withdraw 50% of Rs.22,80,79,435/-. He submits that in Pune district 50% of total decretal amount was allowed to be withdrawn on giving personal undertaking. He submits that this Court has observed that the Government Officers have admitted the claim of the petitioner i.e. the Contractor. He further submits that the petitioner be directed to

withdraw the entire amount.

4. Learned AGP Shri. Lakhotiya submits that the question of limitation is involved in the arbitration proceedings which are pending before the District Court. He submits that the Collector had rejected the application of the petitioner-contractor as it was beyond limitation. The Arbitrator did not consider this fact. He submits that the Arbitrator acting as Divisional Commissioner had himself referred this matter to the Collector. Therefore, it was not proper on his part to not consider the order of the Collector that the claim was barred by limitation. He submits that if entire amount is allowed to be withdrawn on personal undertaking, it will be very difficult for the State to recover the amount from the petitioner-contractor if the State succeeds in appeal before the District Court. Learned AGP submits that such a heavy amount cannot be permitted to be withdrawn only on personal undertaking. He submits that the impugned order, therefore, needs to be interfered with.

5. Learned counsel Shri. Thigale submits that the withdrawal of the amount of 50% passed by the this Court at

the Principal Seat was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court confirmed that order. He submits that, therefore, petitioner be permitted to withdraw the entire amount on personal undertaking.

6. Considering the submissions, I deem it appropriate to allow the petitioner to withdraw the amount of 35% of the amount deposited (i.e.Rs.22,80,79,435/-) on personal undertaking and 25% by giving bank guarantee.

7. Both the petitions are disposed of. Rule discharged.

[M. G. SEWLIKAR, J.]

ssp