

(1)

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

901 CIVIL APPLICATION NO.13129 OF 2019
IN ARBA/13/2011

WITH
CIVIL APPLICATION NO.13130 OF 2019
IN ARBA/12/2011

WITH
CIVIL APPLICATION NO.13131 OF 2019
IN ARBA/14/2011

M/S. MANOJ KUMAR CONSTRUCTION COMPANY,
AURANGABAD
VERSUS
THE GODAWARI MARATHWADA IRRIGATION CORPORATION,
THROUGH EXECUTIVE ENGINEER, PARBHANI

....

Mr G. K. Thigle (Naik), Advocate for applicant;
Mr B. R. Survase, Advocate for respondent

CORAM : RAVINDRA V. GHUGE, J.

DATE : 9th February, 2023

PER COURT:

1. By an order dated 31/03/2021, passed by the learned Senior Most Administrative Judge at Aurangabad, it is noted that the Hon'ble The Chief Justice, under the order dated 20/02/2021, has directed that the matter be placed before this Court (Coram : Ravindra V. Ghuge, J.). It is in these circumstances, that Civil Application Nos.13129/2019, 13130/2019 and 13131/2019 are taken up for hearing.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. The respondent GMIDC has placed reliance upon its affidavit-in-reply dated 26/10/2020, in which, it is contended that this Court had earlier passed an order on 28/07/2011, directing only 50% of the amount (arbitral amount) to be deposited. Out of this 50% (Rs.56,45,218/-) amount, the applicant has withdrawn 50% of the said amount by tendering a Bank Guarantee and the remainder 50% by tendering solvent surety. The said amount, in all these three matters taken together, was Rs.1,12,90,436/-. An equal amount (50%) i.e. Rs.56,45,218/- has not been deposited in this Court, and there was no further order from this Court after 28/07/2011. The other argument put forth by the respondent/GMIDC is, that it is ready for a hearing and the appeals may be listed for final hearing at any time before the learned Single Judge Bench.

3. The learned Advocate for the applicants submits that, the assignment of the learned Single Judge is so heavy, that it is very difficult to take up final hearing matters of 2011. Though the matters have been listed on some occasions, the final hearing has not commenced.

4. The applicant had tendered Civil Application Nos.4974/2019, 4975/2019 and 4976/209, for seeking a direction that the remainder 50% amount be deposited by the GMIDC in this Court. The said Civil Applications were disposed off, by an order dated 02/05/2019 by observing that the appeals be listed for final hearing on 08/08/2019. However, these appeals could not heard and the same are pending even today.

5. The learned Advocate for the applicant submits that, considering the passage of time of almost four years, and the fact that the appeals are yet to be heard finally, this Court may direct the GMIDC to deposit the remainder amount in this Court, considering the view taken by the Hon'ble Supreme Court in it's order dated 26/09/2018 in Special Leave to Appeal (Civ.) Nos.11760-11761 of 2018. The GMIDC was the respondent in the said matter. The Hon'ble Supreme Court referred to it's earlier order dated 16/07/2018 in which, it has been noted as under :-

“The Bombay High Court has ordered 60% deposit, pending the Section 37 appeal. We have passed orders stating 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.

(4)

Accordingly, we set aside the impugned orders dated 19.03.2018 and mandate a 100% deposit be made within a period of eight weeks from today.

The Special Leave Petitions are disposed of accordingly.”

6. Considering the above and the passage of time, during which period, the appeals are still pending and taking into account the direction of the Hon’ble Supreme Court as reproduced above, these applications are partly allowed. The remainder 50% amount of Rs.56,45,218/-, be deposited by the GMIDC in this Court within a period of 30 days from today.

7. After the amount is deposited in this Court, the same would be invested in the Fixed Deposit Receipt with any Nationalized Bank, initially for a period of one year, and if required, to be renewed for similar periods, subject to the decision in the Arbitration Appeal Nos.12/2011, 13/2011 and 14/2011. If the appeals are not finally decided prior to 30/04/2023, the applicants would be at liberty to move civil applications before the appropriate forum for canvassing the request for withdrawal of the amount.

(RAVINDRA V. GHUGE, J.)