

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1496 OF 2023

Solapur Agricultural Produce Market
Committee (Through Authorized Signatory)
Chandrashekhar Annarao Birajdar

...Petitioner

Versus

M/s. Laxmi Construction Company Engineers &
Contractors & Anr.

...Respondents

WITH

WRIT PETITION NO.1498 OF 2023

Solapure Agricultural Produce Market
Committee (Through Authorized Signatory)
Chandrashekhar Annarao Birajdar

...Petitioner

Versus

M/s. Laxmi Construction Company Engineers &
Contractors & Anr.

...Respondents

WITH

INTERIM APPLICATION NO.4556 OF 2023

IN

WRIT PETITION NO.1496 OF 2023

M/s. Laxmi Construction Company Engineers &
Contractors

...Applicant

Versus

Solapur Agricultural Produce Market
Committee (Through Authorized Signatory)
Chandrashekhar Annarao Birajdar & Anr.

...Respondents

Mr. Sanket S. Kulkarni i/b Mr. Amitabh Singh for the applicant in interim

*application & for the respondents in writ petition.
Mr. Abhijit Kulkarni & Mr. Chinmay Patil i/b Abhijit Associate for the
petitioner in writ petition & for the respondent in interim application.*

Coram : Sharmila U. Deshmukh, J.

Date : July 7, 2023.

P. C. :

1. The above two writ petitions arise out the execution proceedings initiated by the decree-holder seeking execution of the arbitral award and as such have been disposed of by this common order.

2. Writ petition no. 1496 of 2023 was instituted challenging the order dated 3rd December, 2022 passed by the executing Court accepting the calculation of the amount by the decree holder as correct and directing to the respondent to deposit the remaining amount as claimed.

3. In the context of this order, learned counsel appearing for the petitioner has pointed out the said arbitral award which provides for interest at the rate of 15% as regards the claim Nos. 1, 2, 3, 4, 5, 6 and 8 from the due date of 11th November, 2009 up to the date of award. He would further submit that the award is silent as regards the award of interest for the period subsequent to the date of award to actual

payment or realization. He has further pointed out that the execution application of the respondent decree holder calculates the interest from the due date as mentioned up to 7th November, 2022.

4. Learned counsel appearing for the decree-holder submits that as the award was not honored, the interest is liable to be levied and is recoverable till the actual payment or realization.

5. Writ petition no. 1498 of 2022 has been filed seeking to challenge the order dated 3rd December, 2022 passed in the same execution application permitting the decree-holder-respondent to withdraw the amount deposited by the petitioner and an additional prayer is made for direction to the District Judge, Solapur to decide the application no. 355 of 2012 within a stipulated period. This Court is informed that the order permitting the withdrawal of amount has been stayed by this Court by order dated 10th January, 2023 and the execution proceeding are kept in abeyance.

6. After arguing for some time, learned counsel appearing for the parties arrived at a consensus that both these writ petitions can be disposed of by directing the District Judge, Solapur to decide the application no. 355 of 2012 filed under section 34 of the Arbitration and Conciliation Act, 1996 within a time bound manner.

7. Learned counsel appearing for the decree-holder would contend that whether the District Judge, Solapur will have the jurisdiction in view of the Commercial Courts Act is also required to be considered, inasmuch as if it is held that the Appellate Court does not have jurisdiction, the entire process will be frustrated.

8. I have not gone into merits of the matter, considering that the parties have now agreed that they will prosecute the Application No. 355 of 2012 pending before the District Judge, Solapur. Considering that the application is of the year 2012 and the decree holder in spite of an arbitral award is unable to take the benefits of award, in my opinion, it is in the interest of justice that the District Judge, Solapur is requested to decide Application No. 355 of 2012 within a period of four weeks from the date of production of a copy of this order before the District Judge, Solapur.

9. Considering the contention of learned counsel appearing for the decree holder as regards the jurisdiction in view of the Commercial Courts Act, the District Judge, Solapur shall apply its mind to this issue and ensure that the application is heard by the Competent Court. It is made clear that there are no adjournments to be granted in the matter and the matter to proceed irrespective of the presence or absence of the parties.

10. Till the decision in the Application No. 355 of 2012, the execution proceedings are kept in abeyance. Learned counsel appearing for the petitioner submits that the order as regards the calculation of the amount is required to be quashed and set aside which is passed below Exhibit-32. Considering that the execution application *prima facie* exceeds the amount of award under the arbitral award, the impugned order dated 3rd December, 2022 is hereby quashed and set aside. In event the decree holder succeeds in the appeal, it is open for the decree holder to carry out the necessary amendment in the execution application in accordance with the arbitral award. Needles to state that all the rights and contentions of the parties are expressly kept open.

11. In view of disposal of writ petitions, nothing survives in the interim application and the same stands disposed of

12. Parties to appear before the District Judge Solapur on **14th July, 2023.**

[Sharmila U. Deshmukh, J.]