

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 19444 OF 2022
IN
ARBITRATION APPEAL NO. 1 OF 2021**

National Highways Authority of India
Project Implementation Unit, Nashik ... Appellant
Versus
Kashinath Jayram Gharat & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO. 19414 OF 2022
IN
ARBITRATION APPEAL NO. 3 OF 2021**

**WITH
INTERIM APPLICATION NO. 19445 OF 2022
IN
ARBITRATION APPEAL NO. 4 OF 2021**

**WITH
INTERIM APPLICATION NO. 19698 OF 2022
IN
ARBITRATION APPEAL NO. 2 OF 2021**

**WITH
INTERIM APPLICATION NO. 19699 OF 2022
IN
ARBITRATION APPEAL NO. 5 OF 2021**

**WITH
INTERIM APPLICATION NO. 19700 OF 2022
IN
ARBITRATION APPEAL NO. 6 OF 2021**

Mr. Kevic Setalvad, Senior Counsel, Calkaka Shristi Shetty i/b M.V. Kini &
Co. for the Applicant/Appellant.

Mr. Sanjay Shimpi a/w Nilesh Patil for the Respondents.

CORAM : R.I. CHAGLA, J.

DATED : 5th OCTOBER, 2023.

ORDER :

1 By these Interim Applications the Applicant/Appellant is seeking permission to amend the Arbitration Appeals as per the schedule annexed to the Interim Applications as well as consequential amendments to be allowed.

2 The Applicant who has filed the present Arbitration Appeals has challenged the order passed by the Thane District Court dated 21.11.2020 allowing the Respondents' application and directing the Applicants to deposit the additional compensation alongwith interest within four weeks.

3 It is necessary to note that the said order dated 21.11.2020 was passed during the pendency of the Application filed under Section 34 of the Arbitration and Conciliation Act which had challenged the order of the Arbitrator condoning delay in filing the arbitration case dated 09.04.2018 and pursuant to which the Award dated 21.05.2018 was passed directing the Applicants to pay excess compensation to the Respondents over and above what had already been paid.

4 Thereafter, in the Arbitration Appeals filed before this Court an Interim Application had been taken out for stay of the order dated 21.11.2020 which was not granted and it was made clear that the pendency of the Arbitration Appeals filed before this Court will not come in the way of the proceedings under Section 34 of the Arbitration Act being decided by the District Court.

5 It is further relevant to note that the Thane District Court by order dated 06.06.2022 extended the time for the Applicants herein to deposit the amount till 27.06.2022. On 27.06.2022 a further application was taken out by the Applicants herein before the Thane District Court for extension of time by four weeks. The Thane District Court whilst rejecting the Applicants' application for extension of time had also dismissed the Applicants' Section 34 Petition due to non deposit of the compensation amount.

6 The present Interim Applications have been filed for amendment of the above Appeals for bringing the subsequent events on record as well as a challenge to the order dated 27.06.2022 which had dismissed the Applicants' Petition under Section 34 of the Arbitration Act on the ground of non-deposit of the compensation amount.

7 In my view the subsequent facts are material as well as a

challenge to the order dated 27.06.2022 dismissing the Applicants Section 34 Petition is necessitated as the original Arbitration Appeals have challenged the deposit of the additional compensation along with the interest which had been allowed by the Thane District Court by order dated 21.11.2020. I have considered the fact that the issue of order of deposit itself is challenged in the original Arbitration Appeal and that the Section 34 Petition had challenged the Award of additional compensation which has been rejected by the said order dated 27.06.2022 passed by the Thane District Court solely on the ground that there was non-deposit by the Petitioners. Hence, in my view these subsequent facts and challenge to the said order dated 27.06.2022 are required to form the subject matter of the Arbitration Appeals.

8 The learned Counsel appearing for the Respondents has vehemently opposed the Interim Applications on the ground that there has been non deposit of the additional compensation despite rejection of the application for the stay of the order dated 21.11.2020 directing the Applicants to deposit additional compensation passed by the Thane District Court. He has submitted that it is only upon such deposit being made in compliance with the order of Thane District Court, the Applicants herein can be allowed to challenge the order dated 27.06.2022 which had dismissed the Section 34 Petition and that too in separate Appeals.

9 Having considered the submissions, in my view there is not much merit in the objection raised by the Respondents herein. This is in view of the original Arbitration Appeals being filed challenging the deposit of additional compensation. The amendment which is for a challenge to the order dated 27.06.2022 passed by the Thane District Court dismissing the Petition under Section 34 of the Arbitration Act is a sequitur to the order dated 21.11.2020. Thus, in my view all these issues can be raised and considered at the hearing of the amended Arbitration Appeals.

10 Accordingly, the prayers sought for in the Interim Applications are required to be allowed and by permitting the Appellants to carry out amendment in the Arbitration Appeals as per the schedule of amendment annexed to the Interim Applications as well as consequential amendments.

11 The Applicants shall carry out the amendment within a period of one week from the date of this order.

12 Interim Applications are accordingly disposed of.

13 Apart from these Interim Applications which have been disposed of by this order, there are two additional Interim Applications

which have been filed. These Interim Applications are currently bearing e-filing number and not lodging number. The Advocate for the Applicant shall remove office objections and have the Interim Applications numbered.

14 The Interim Applications are for amendment of the Arbitration Appeals for challenging the order dated 02.09.2023 passed by Civil Judge, Senior Division, Thane, in the execution applications taken out by the Respondents herein. By the said order warrants of attachment have been issued under Order XXI Rule 43 of the Code of Civil Procedure, 1908.

15 The learned Counsel appearing for the Respondents herein states on instructions that till the next date the Respondents will not proceed with the execution of the attachment warrants and/or execution applications before the Court of Civil Judge, Senior Division, Thane. Statement is accepted.

16 Interim Applications if numbered, shall be listed on 11.10.2023 on the supplementary Board.

(R.I. CHAGLA, J.)

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signed by
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SUSHIL
WAGHMARE
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