

SA Pathan

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

WRIT PETITION NO.13168 OF 2023

WITH

WRIT PETITION NO.13172 OF 2023

WITH

WRIT PETITION NO.13169 OF 2023

WITH

WRIT PETITION NO.13170 OF 2023

WITH

WRIT PETITION NO.13171 OF 2023

Prakash Shantaram Kaskar & Ors ... Petitioners

V/s.

The Competent Authority and Sub
Divisional Officer Vasai & Ors ... Respondents

Mr. Anil D'souza a/w Mr. Yogesh Rawool, Mr. Nitin Bhoir, Mr. Valentine Mascarenhas and Mr. Ernest Tuscano i/by Mr. S. S. Redekar, for Petitioners in all Writ Petitions.

Ms. Heena Shaikh i/by M. V. Kini & Co., for Respondent No.2.

Mr. B. V. Samant, AGP a/w Mrs. S. S. Bhende, AGP for the State-Respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 13, 2023

P.C.:

1. Challenge in all the writ petitions is to the order dated 5 October 2023 passed by the Additional Sessions Judge – 3, Thane.
2. Since the fact involved in all the writ petitions in the context of issue involved are common and, therefore, all writ petitions are disposed of by common order.
3. The issue involved in all these writ petitions is as to whether a litigant challenging arbitration award passed by the Arbitrator under Section 3(G) of the National Highways Act, 1956 is required to pay court fees as per Government Resolution dated 27 April 2010 when the Arbitrator rejects the reference.
4. The issue involved in all these writ petitions is no longer res integra in view of judgment of Single Judge of this Court in the case of **Saraswat Co-operative Bank Vs. Fariruddin Quereshi** reported in (2011) SCC OnLine Bom 245. This Court was considering an issue of payment of ad valorem court fees as per Schedule I, Article 3(A) or a fixed court fees as per Schedule II, Article 1 (f) (iii) of the Bombay Court Fees Act, 1959.
5. After taking into consideration, the relevant provisions and earlier precedents, this Court in paragraph 37 has laid down as under:

“**37.** Under the Arbitration Act, whosoever filed a claim Petition for whatsoever amount, against the Respondent/opponent need not pay any court fees for want of specific provisions under the BCF Act and/or

under the Arbitration Act. Therefore, Article 3A which deals with Arbitration Act, cannot be invoked for charging the Court fees on the basis of such submission. The Court fees just cannot be charged unless it is specifically provided. There is no question of any interpretation and/or reading such clauses/articles, in favour of charging the court fees in such cases. In the present case, there is a total rejection of claims. The Petition under Section 34 as filed, to set aside or modify the award, no ad-valorem Court fees as contemplated under Article 3A, for want of any amount and/or valuation of the award, is payable. There is no clear charging provision. No Court fee is therefore, payable if there is challenge to the finding given in the award, unless it is subject to grant of monetary claim or adjustment of any amount.”

6. Since this Court has held that in an application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging award for granting any compensation, no court fees is payable, therefore, the impugned order cannot be sustained. Hence, following order:

- a) The impugned order dated 5 October 2023 passed by the Additional Sessions Judge – 3 Thane in respective cases is quashed and set aside.
- b) It is held that the petitioners are not liable ad valorem court fees as per Schedule I, Article 3(A) or a fixed court fee as per Schedule II, Article 1 (f) (iii) of the Bombay Court Fees Act, 1959. However, if the petitioners are required to pay court fees under other charging sections/provisions, the

petitioners shall pay such court fees.

7. All the writ petitions stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)