

Nikita

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

WRIT PETITION NO.11586 OF 2023

Ashok Leyland Limited, (A.G.M.)
 Pramod Joshi ... Petitioner
V/s.
 Solapur Municipal Transport
 Undertaking and Anr. ... Respondents

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Mr. Dinesh Purandare a/w Mr. Rajiv Naik a/w Mr.
 Altamash Kapadia i/b Mr. Sujit Lahoti and Associates
 for the Petitioner.

Mr. Vijay Killedar, a/w Mr. Sumedh Modak for the
 Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 13, 2023

P.C.:

1. Challenge in this petition under Article 227 of the Constitution of India is the order dated 21st October 2022, passed by the Executing Court rejecting application to execute award dated 16th April 2019.

2. The Arbitrator passed an award on 16th April 2019, holding petitioner entitled to Rs.21,32,58,592/- along with the interest at the rate of 10% per annum from 1st March 2015, till the date of realization. Moreover, petitioner is held to be entitled to sum of Rs.4,54,06,000/- along with the interest on the fix deposit receipts

and he is further directed to pay interest at the rate of 10% per annum from the date of maturity till the date of realization.

3. The petitioner filed execution application before the executing Court. In the said execution petition, petitioner filed an application under Order 21 Rule 31 of the Code of Civil Procedure, 1908 in relation to Clause 2 of the operative part of the award as regards fix deposits. The Executing Court rejected said application holding that such application is not maintainable as Order 21 Rule 31 is applicable only to a decree specifying specific movable share in movable property.

4. Learned advocate for the petitioner submitted that mere wrong provision mentioned in the application would not disentitle a party from claiming relief if the Court has otherwise power to grant such relief. The Executing Court could have exercised power under Order 21 Rule 30 and ought to have directed judgment debtor to pay the amount as sought by the petitioner.

5. Per contra, learned advocate for the judgment debtor submitted that it is not possible for judgment debtor to pay the amount due to loss of economic ability of respondents. It is submitted that application for stay of award has been allowed subject to payment of 50% of the award. The petition challenging said order is pending before this Court, and therefore, hearing of the present petition needs to be postponed till the decision in writ petition challenging order of conditional stay.

6. I have heard counsel for the parties and perused the record. It appears that the arbitrator has passed an award on 16th April

2019, clause (ii) of Sub-clause (b) of paragraph No.102, reads as under:

“ The Respondent is entitled to an Award in the sum of Rs.4,54,06,000/- (Rupees Four Crores Fifty Four Lakhs and Six Thousand Only) along with the interest accrued thereon as per the terms of the Fixed Deposit Receipt the details of which are mentioned in paragraph 88 above. The Claimant is directed and ordered to liquidate the said Fixed Deposit at the nearest maturity date from today and pay the aforesaid sum alongwith the interest accrued thereon to the Respondent. The Claimant is directed and ordered to pay further interest at 10% per annum on the sum awarded herein from the nearest date of maturity of the Fixed Deposit upto the date of payment and/or realization.”

7. It is not in dispute that Court entertaining the application under Section 34 has granted conditional stay. Order of conditional stay was passed on 27th June 2023, therefore, as of today, it is not in dispute that condition imposed by the Court under Section 34 has not been complied with by the judgment debtor. Hence, the award as of today is executable. Once the award is executable, it is the obligation on the Executing Court to execute the award. The prayer made by the petitioner is for enforcement of Clause (ii) of Sub-clause (b) of paragraph No.102 of the award. Order 21 Rule 30 mandates executing Court to execute Clause (ii) of Sub-clause (b) of paragraph No.102 of the award. Therefore, rejection of the application filed by the decree holder for execution of Clause (ii) of Clause (b) of paragraph No.102 was improper. Hence, it is necessary that the Court needs to direct execution of Clause (ii) of Sub-clause (b) of paragraph No.102 of award in exercise of power under Order 21 Rule 30 of the Code of Civil Procedure, 1908. Hence following order:

- i) Impugned order dated 21st October 2022, is quashed and set aside.
 - ii) Therefore, application dated 7th June 2022 below Exhibit-25 stands allowed.
8. The writ petition stands disposed of.

(AMIT BORKAR, J.)