

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

ARBITRATION APPEAL NO. 15/2023

(SARANG PRAKASH UPAGANLAWAR & OTHERS **VERSUS** GOVERNMENT OF INDIA & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri M.G. Bhangde, Senior Advocate with Shri Nishant Gurnani, counsel for the appellants.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : MARCH 14, 2023.

In this appeal, the challenge is raised to the common judgment passed in the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the said Act'). By that judgment dated 21.11.2022, the award passed by the Arbitrator on 21.06.2019 has been set aside and the proceedings preferred by the respondents herein have been allowed.

Since arguable questions are raised in this appeal challenging the aforesaid adjudication, **ADMIT**.

Learned Deputy Solicitor General of India Shri N.S. Deshpande waives notice of hearing for the respondent no.1.

Learned counsel Shri A.A. Kathane waives notice of hearing for the respondent no.2.

Learned Assistant Government Pleader Shri A.A. Madiwale waives notice of hearing for the respondent nos.3 and 4.

The record of the proceedings that were decided by the respondent no.4-Additional Commissioner as well as the record of the proceedings under Section 34 of the said Act be called for perusal within a period of four weeks from today.

Stand over four weeks alongwith Arbitration Appeal No. 14 of 2023.

CIVIL APPLICATION (M) NO. 14/2023.

Since the applicants seek to amend the memorandum of appeal, the application is allowed. The amendment be carried out within a period of one week.

CIVIL APPLICATION (M) NO. 13/2023.

We have heard the learned counsel for the parties on the prayers made in the civil application.

As the award passed by the Arbitrator has been set aside in the proceedings under Section 34 of the said Act, the applicants pray that the impugned judgment dated 21.11.2022 be stayed during pendency of the present appeal.

It is to be noted that during pendency of the proceedings before the District Court, 20% amount of the enhanced compensation was permitted to be withdrawn by the applicants subject to furnishing solvency certificate alongwith an undertaking that if the said proceedings were allowed, the amount already withdrawn would be refunded to the respondent no.2. It is thus prayed that this direction requiring the applicants to refund that amount to the respondent no.2 be stayed.

According to the learned counsel for the respondent no.2, the award having been set aside, there is no justification on the part of the applicants retaining the said amount that was withdrawn conditionally. Further, the balance amount that was deposited with the District Court ought to be permitted to be withdrawn since the award has now been set aside.

We note that the interim order passed by the District Court in the proceedings under Section 34 of the said Act permitting withdrawal of 20% of the amount of enhanced compensation had been challenged by the parties by filing arbitration appeals before this Court. By order dated 08.07.2022 while disposing of the said appeals the applicants were permitted to retain 20% amount of the enhanced compensation on furnishing solvency certificate alongwith an undertaking. We find that since the present appeal is now to be decided finally, the position as prevailing in the interregnum deserves to be maintained. Consequently, while permitting the applicants to retain the 20% of the amount that they have withdrawn in the proceedings under Section 34 of the said Act based on the undertaking and the solvency certificate furnished, the respondent no.2 would be at liberty to withdraw the balance amount that is lying in deposit with the District Court. The applicants shall furnish fresh solvency certificate as well as fresh undertaking within a period of two weeks from today stating therein that in case the appeal is dismissed the amount withdrawn would be repaid to the respondent no.2 with interest at such rate the Court may direct.

With these directions, the civil application is disposed of.

(M.W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

APTE