



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 7078 of 2022

Yogesh Subhashrao Kanchalwar and another

Versus

Union of India, through its Secretary, Ministry of Shipping Road
Transport and Highways Transport Bhavan No.1, New Delhi and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.B.Mohta, Advocate for the petitioner.

Shri A.A.Kathane, Advocate for the respondent no.2.

Shri D.P.Thakare, Addl.G.P. for the respondent nos. 3
and 4.

CORAM : ANIL S. KILOR, J.

DATED : 5th OCTOBER, 2023.

Heard

2. In the present writ petition two fold challenge is raised instead of directing the respondent National Highway Authority of India to deposit 100% amount from the arbitration award only 50% was directed to be deposited, whereas in similar matters in certain cases, the Court has directed to deposit 100% and the second challenge is to the order asking the

petitioner to furnish the double solvent surety while permitting the petitioner to withdraw the amount.

3. The learned counsel for the respondent is not disputing the said fact and in some of the matters, the learned Lower Appellate Court has directed to deposit 100% of the amount of Arbitral Award.

4. In that view of the matter, I am of the opinion that there is no reason recorded by not adopting the same course of action in the present matter and directing respondent National Highway Authority of India to deposit the 50% of the amount and therefore the order dated 3rd December, 2020 below Exhibit 5 in CMA No. 49 of 2019 passed by the Principal District Judge, Yavatmal is hereby modified and National Highway Authority of India is directed to deposit 100% amount of the arbitral amount within eight weeks from today.

5. As far as furnishing other solvent surety, this Court has already passed vide order dated 18th April, 2023 in Writ Petition No. 3090 of 2022 holding such condition is not permissible.

6. As far as modification of Clause (i) of the of the impugned order dated 17th December, 2021 to the extent of asking the petitioner to furnish solvent security of double amount is concerned, I am of the

opinion that in view of the statement made by the learned counsel for the petitioner that the petitioner is ready to furnish solvent security for 50% amount with undertaking that if he fails in the appeal, he will repay the amount along with simple interest @ 6% per annum on the amount directed to be repaid, I am of the opinion that it will protect the interest of National Highways Authority of India.

7. In similar matters, the Supreme Court of India vide judgment dated 1st August, 2016 in the case of Bahubali Ravaji Doshi & Ors ..vs.. State of Maharashtra & Anr. in Civil Appeal No.7193/2016 (SPL © 20414/2016) has held thus :

- “1. Leave granted.
2. In the nature of the order we propose to pass, it is not necessary to issue notice to the respondents. In all connected matters, this Court has directed the Reference Court to release 50% of the amount deposited by the State without security and the remaining 50% with security to the satisfaction of the Court.
3. That order will govern the case of the appellants as well. The High Court may adopt the same pattern in all the connected cases, so that parties do not have to unnecessarily travel to this Court.
4. In view of the above, the appeal is disposed of. No costs.”

8. The Supreme Court of India vide judgment dated 26th September, 2018 in the case of

Manish..vs..Godawari Marathawada Irrigation
Development Corporation in Petition for Special Leave
to Appeal (C) No(s). 11760-11761/2018 has held thus :

“This Court, on 16.07.2018, passed the following order:

“ No one appears for the respondent, even though served. The Bombay High Court has ordered 60% deposit, pending the Section 37 appeal. We have passed orders stating that since these are money decrees there should be 100% deposit, with the respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court.

Accordingly, we set aside the impugned orders dated 19.03.2018 and mandate a 100% deposit be made within a period of eight weeks from today.

The Special Leave Petitions are disposed of accordingly.”

Upon being mentioned by learned counsel for the petitioner, the following sentence is incorporated in the aforesaid order before the last line:

“The deposit so made may be allowed to be withdrawn on furnishing solvent security to the satisfaction of the Registrar of the High Court.”

9. In the circumstances, I am of the opinion that Clause (i) of the impugned order dated 17th December, 2021 needs to be modified. Accordingly I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 3rd December, 2020 passed below Exh.5 by learned Principal District Judge, Yavatmal is hereby quashed and set aside.

- iii) The Clause No.(i) of operative order dated 17th December 2021 passed below Exhibit 20 in CMA No. 49 of 2019 by the learned Principal District Judge, Yavatmal is modified to the extent that “(i) amount of 50% out of 100% arbitral amount along with interest, if any, be given to the non-applicant No.3 by issuing account payee cheque in his name. The non-applicant No.3 shall file an Undertaking to the effect that in case he fails in the appeal, he shall repay the amount as directed by the Court, along with simple interest thereupon @ 6% per annum;
- iv) Liberty is granted to the applicant/claimant to move application for withdrawal of remaining 50% of the amount whenever he would be in a position to furnish solvent surety of remaining 50% of the amount.

[ANIL S. KILOR, J.]

10. At this stage, Shri Kathane, learned counsel for the respondent prays for expediting the appeal.

11, Considering the issue involved in the present matter and the fact that the petitioner is permitted to withdraw the amount, I am of the opinion that it would be in the interest of justice if any such directions are issued to the learned Appellate Court to expedite the hearing.

12. Accordingly, learned Principal District Judge, Yavatmal is directed to expedite the arbitration appeal and decide the same expeditiously, in any case, within six months from today.

[ANIL S. KILOR, J.]