

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 2473 of 2023

Date of decision: 16th May, 2023

Haryana State Roads & Bridges Development Corporation Ltd. & another

Petitioners

Versus

M/s PNC Infratech Limited and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Rana, Advocate for the petitioners.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed aggrieved of order dated 31.3.2023 whereby the petitioners were granted stay subject to deposit of 100% awarded amount in the form of an FDR in the name of the court.

2. The brief facts are that the petitioners allotted tender to respondent No. 1 for construction of a road. The terms and conditions provided for dispute resolution through arbitration, the proceedings initiated at the instance of respondent No. 1 culminated in award dated 3.2.2019. The objections filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') are pending. On an application filed under Section 36 of the Act, the stay was granted subject to deposit of awarded amount in Court, in the shape of FDR.

3. Learned counsel for the petitioner submits that the court concerned erred in directing 100% deposit of the awarded amount as objections under Section 34 of the Act are pending.

4. Before proceeding further, it would be relevant to reproduce Section 36 of the Act:-

“Enforcement.-(1) Where the time for making an application to set aside the arbitral award under Section 34

has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.”

5. As per Section 36(1) after expiry of limitation to file the application under Section 34 of the Act, subject to provisions of sub-section (2), the arbitral award shall be enforced like a decree of court in accordance with provisions of Code of Civil Procedure. Sub-Section 2 provides that the award shall not become unenforceable merely on filing of an application under Section 34 of the Act. The exception being the cases where the Court stays operation of the arbitral award. On application under sub-section (3), the Court may stay operation of the arbitral award by imposing such conditions as it may deem fit. The Court shall record reasons for granting

the stay. The proviso to sub-section (3) provides that while granting the stay, provisions of Civil Procedure Code have to be given due regard.

6. The issue to be considered while dealing with stay of money decree has been settled in numerous decisions of Apex court. In the impugned order, the equities between the parties were balanced by securing the amount awarded.

7. It would be relevant to quote the following paragraphs of the decision of the Supreme Court in ***M/s Malwa Strips Pvt. Ltd. v. M/s Jyoti Ltd., 2009(1) SCC (Civil)580:***

“The appellate court, indisputably, has the discretion to direct deposit of such amount, as it may think fit, although the decretal amount has not been deposited in its entirety by the judgment debtor at the time of filing of the appeal. But while granting stay of the execution of the decree, it must take into consideration the facts and circumstances of the case before it. It is not to act arbitrarily either way. If a stay is granted, sufficient cause must be shown, which means that the materials on record were required to be perused and reasons are to be assigned. Such reasons should be cogent and adequate.

The High Court, with respect, failed to notice that suit was one under Order XXXVII of the Code. Whether it was maintainable or not may fall for consideration in the appeal. Even assuming that the same was not maintainable, the question which should have been posed by the High Court was as to whether sufficient cause had been made out to reverse the decree passed in favour of the appellant. Even a decree could have been passed having regard to the defence raised by the respondent under Order XII Rule 6 of the Code. We, therefore, see no justification at all as to why an order of stay of the nature was passed by the High Court.

Even if the said provision is not mandatory, the purpose for which such a provision has been inserted should be taken into consideration. An exceptional case has to be made out for stay of execution of a money decree. The Parliamentary intent should have been given effect to. The High Court has not said that any exceptional case has been made out. It did not arrive at the conclusion that it would cause undue hardship to the respondent if the ordinary rule to direct payment of the decretal amount or a part of it and/or directly through the judgment debtor to secure the payment of the decretal amount is granted. A strong case should be made out for passing an order of stay of execution of the decree in its entirety.”

8. The contention of learned counsel for the petitioners that no condition should have been imposed as the objections under Section 34 of the Act are pending lacks merit. From reading of Section 36(2) of the Act, it is clear that pendency of objections in itself shall not operate as stay. No exceptional case is made out for interference in the impugned order and for granting unconditional stay.

9. The revision petition is dismissed.

10. Since the main petition has been dismissed, pending application(s), if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

16th May, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |