

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1764 OF 2024

Madhumati Manojkumar Kheradkar	.. Petitioner
Versus	
The Competent Authority & Anr.	.. Respondents

WITH
WRIT PETITION NO. 9775 OF 2024

Dadaso Narasgonda Patil	.. Petitioner
Versus	
The Competent Authority & Anr.	.. Respondents

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- Ms. Bhavika Shinde a/w Mr. Umesh Mankapure & Mr. Nilesh Wable for Petitioner
 - Mr. P.G. Sawant, AGP for Respondent No. 1 - Competent Authority.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 6, 2024

P. C.:

1. Heard Ms. Shinde, learned Advocate for Petitioner and Mr. Sawant, learned AGP for Respondent No. 1 - Competent Authority.

2. Present Writ Petitions impugn and take exception to the order dated 05.09.2023 passed by the District Court, Sangli wherein proceedings have been filed by Petitioners to challenge the Arbitration Award passed under Section 3H of the National Highways Act, 1956 (for short "**the said Act**"). Admittedly Petitioners are the owners of the acquired land and from 2016 onwards, the Acquiring Body along with the State Government took steps to acquire the Petitioners' land for the

desired public purpose. On 11.09.2018 Respondent No. 1 i.e. Competent Authority (Land Acquisition) and S.D.O. Miraj passed the statutory Award. Being aggrieved with the statutory Award, Petitioners filed Arbitration Application for enhancement of market value before the learned Arbitrator i.e. Collector, Sangli under the provisions of Section 3G(5) of the said Act. By impugned Award dated 13.04.2023, learned Arbitrator dismissed Petitioners' Arbitration Application seeking enhancement of compensation by separate awards. Being aggrieved with the said Award of dismissal dated 13.04.2023, Petitioners filed Application under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Court, Sangli to challenge the Award. At the threshold learned District Court by the impugned order dated 05.09.2023 directed both the Petitioners to pay *ad valorem* Court fees on the amount stated in the Award.

3. Ms. Shinde would submit that Petitioners are aggrieved with the rejection to the challenge for enhancement of the Award in respect of acquisition of the Petitioners' lands under the said Act. She would submit that lands of Petitioners were acquired against their wishes and under the power of eminent domain under the said Act and therefore filing the statutory Application / Appeal under Section 34 of the Arbitration and Conciliation Act is Petitioners' right to seek appropriate market value in respect of Petitioners' acquired lands in

accordance with law. She would submit that relevant provisions governing payment of Court fee is as per Schedule I, Article 3A of the Bombay Court Fees Act, 1959 and if the same is seen, then Petitioners are not required to pay any *ad valorem* Court fee at all. She would submit that Petitioners are sought enhancement of the Award granted by Respondent No. 1 - Competent Authority in the first instance by filing the enhancement Application. She would submit that resultantly Petitioners cannot quantify the claim amount which would be the market value that will be decided either by the Competent Authority or the Court.

4. Ms. Shinde would draw my attention to the decision in the case of **Saraswat Co-operative Bank Ltd. Vs. Fariruddin Quereshi N. & Ors**¹. to contend that the reason given by the learned District Court in the impugned order dated 05.09.2023 is not sustainable in view of the settled position of law decided in the above case which is prevalent. In view of the above decision which has referred to the Full Bench Decision in the case of **Harjinder Singh Balwant Singh Osan Vs. Paramjeet Singh Balwant Singh Osan**². and the decision of the Supreme Court in the case of **Prem Lala Nahata & Anr. Vs. Chandi Prasad Sikaria**³, it is held that the provisions of Article 3 of Schedule I

1 2011 SCC OnLine Bom 245

2 (2008) 6 Bom CR 565

3 AIR 2007 SC 1247

of the Bombay Court Fees Act is not applicable to the Petition filed under Section 34 or for a memorandum of Appeal filed under Section 37 of the 1996 Act. Said decision concludes that whenever a challenge is maintained by an Application or Petition to set aside the Award or modify the Arbitral Award, the litigant is required to pay 1/2 of the *ad valorem* Court fee on the amount or value of amount of Award sought to be set aside or modified and this is subject to payment of *ad valorem* Court fee as prescribed in Article 3A of Schedule I and not otherwise. However, the very decision further holds that in a case where the Arbitral Tribunal has dismissed the claim of a litigant then it will have to be construed that there is no amount awarded by the Award which needs to be set aside or modified by any Application filed under Section 34 of the Arbitration and Conciliation Act. The reason being that for computation of *ad valorem* Court fee, there has to be some claim or basis for calculating the said *ad valorem* Court fee on the basis of such claim. This is the precise reason why in paragraph No. 37 of the aforesaid decision in the case of *Saraswat Co-operative Bank Ltd (1st Supra)*, Court has held that the provisions of Article 3A cannot be invoked for charging the Court fees on the basis of the aforesaid facts and the Petition filed under Section 34 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. The Court has concluded that there is in fact no clear charging provision at all and hence no Court fee is payable if there is challenge to the findings given in such an Award unless it is subject to grant of monetary claim or adjustment of any amount. The aforesaid findings clearly align with the facts in the present case and therefore the said decision is directly relevant.

5. For convenience and reference, paragraph Nos. 32 to 37 of the decision in the case of *Saraswat Co-operative Bank Ltd (1st Supra)* are reproduced herein under:-

"32. However, w.e.f. 01/09/2009, by the Maharashtra Ordinance XII of 2009, an amendment has been incorporated by replacing the earlier Article 3 to 3A in schedule I. This new Article contemplates that on the plaint, application or petition, to set aside or modify any Arbitral Award under the Act; the ad-valorem fee or proper fee payable is one half of the ad-valorem fee on the amount or value of the award sought to be set aside or modified, according to the scale prescribed under Article 1 of Schedule I. Article 1 prescribed, plaint or memorandum of appeal (not otherwise provided for in this Act) or, of cross objection presented to any Civil or Revenue Court, based upon the amount or value of the subject matter in dispute as prescribed. The amount of Court fees payable depend on the amount or value of the award and not by any other method.

33. The judicial notice of following legal principles and citations can be taken note of by the Court though not cited by the parties.

- (a) When the meaning is plain, the Court cannot enlarge scope of it. Express words need to be respected. The object and intention of the Act cannot prevail over express provisions. [*Snehadeep Structures Private Limited v. Maharashtra Small-Scale Industries Development Corporation Limited*]
- (b) It is necessary to consider all the provisions of a concerned Act/Rules/Schedules. It cannot be read in isolation.
- (c) If there is any doubt or ambiguity, the benefit should go in favour of a litigant.
- (d) The concept of "Court fee" cannot be equated with the concept of "Tax". The Court fee cannot be intended to collect and/or generate to be a revenue except to collect the cost of

administration of civil justice. [(1973) 1 SCC 162 - The Secretary, Government of Madras, Home Department v. Zenith Lamp and Electrical Ltd., (1996) 1 SCC 345 - Secretary to Government of Madras v. PR. Sriramulu]

34. *If there is lacuna in the Court Fees Act, the Court cannot interpret the existing provision to bring in the present case under the ambit of Court Fee Act. There is nothing pointed out that Suit Valuation Act and the Court Fee Act applies to the value of the arbitration also, which is not plaint, both for the purposes of jurisdiction and the Court fee. There is no practice of paying any court fee at the time of filing petitions, irrespective of the claim amount, before the Arbitrator under the Act and/or even under Section 89 of Code of Civil Procedure (CPC). The direction to refund of court fee on reference to Alternative Dispute Resolution (ADR) under Section 89 of CPC cannot be overlooked as it covers arbitration proceedings also. [Salem Advocate Bar Association T.N. v. Union of India] 1 The purpose and object of Arbitration Act also play an important role while interpreting the provisions in question.*

35. *Therefore, on a plain and simple reading of this provision, whosoever wants to file Application or Petition and/or appeal to set aside the award or modify the Arbitral Award, need to pay one half of the ad-valorem fees on the amount or value of the amount of award sought to be set aside or modified. This, in my view, contemplates that there is a monetary award passed against the party, which the aggrieved party wants to challenge by such application or petition or by appeal to set aside or modify the said award under the Arbitration Act, which is subject to ad valorem Court fees as prescribed in Article 3A of Schedule I and not otherwise.*

36. *In the present case, the situation is quite different. Here by the common order, the Arbitral Tribunal has dismissed all the claims of the disputant bank, therefore, there is no amount awarded by the award which needs to be set aside or modified by application under Section 34 of the Arbitration Act. The submission that the valuation or the amount so involved or referred in the claim Petition by the disputant bank, should be the basis for calculating the ad-valorem fees as per Article 3A, in my view is untenable.*

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. Mr. Sawant, learned AGP would submit that the decision in the case of *Saraswat Co-operative Bank Ltd (1st Supra)* is not applicable to the facts of the present case. According to him in the present case, challenge to the dismissal of the Award by the Competent Authority before the District Court is with respect to enhancement and therefore it is the specific claim of the Petitioners that they are entitled to the enhanced amount and it is a quantifiable amount. In that view of the matter, Petitioners are required to pay *ad valorem* Court fee under Article 3A of Schedule I of the Bombay Court Fees Act to the extent of payment of 50% *ad valorem* Court fee since the issue pertains to acquisition of Claimants' land. On being asked as to what is the quantified amount claimed by the Petitioners, Mr. Sawant is unable to state the same in respect of both Petitioners. However in view of the specific findings returned in the case of *Saraswat Co-operative Bank Ltd (1st Supra)* in paragraph Nos. 32, 33 and 34 therein and the above observations of facts in the present case which have been delineated by me, the submissions made by Mr. Sawant cannot be accepted.

7. Ms. Shinde would submit that Petitioner in Writ Petition No. 1764 of 2024 is a female lady whereas Petitioner in Writ Petition No. 9775 of 2024 is a male. She would also place on record a decision of this Court in the case of **Ramila Rajnikant Kilachand Vs. Harsh**

Rajnikant Kilachand & Ors⁴. to contend that even otherwise while interpreting the Government Resolutions of 1994 and 2000, this Court has come to the conclusion that being a female and woman beneficiary as a litigant coming to Court in land acquisition proceedings, she would otherwise be completely exempted from payment of Court fee altogether.

8. In both Writ Petitions, in view of the ratio in the case of *Saraswat Co-operative Bank Ltd (1st Supra)*, it is held that no *ad valorem* Court fees are payable by both the Petitioners in the Section 34 Application filed before the District Court. Hence, both impugned orders are quashed and set aside.

9. Both the Writ Petitions stand allowed and disposed of in the above terms.

[MILIND N. JADHAV, J.]

⁴ (2004) 6 Bom CR 75