



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

Writ Petition No. 1293 of 2025

[Indo Pacific Projects Ltd., (previously known as Indo Pacific Software
& Entertainment Ltd), Nagpur through its authorized signatory Ms. A. D. Wani
..vs.. PVR INOX Limited (INOX Leisure Ltd.), Andheri, Mumbai]

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

Court's or Judge's orders

Mr. S. K. Mishra, Senior Advocate assisted by Mr. Masood Shareef,
Advocate for the petitioner
Mr. R. R. Deo, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 13-03-2025

Heard Mr. S. K. Mishra, learned Senior Counsel
assisted by Mr. Masood Shareef, learned Counsel for the
petitioner, Mr. R. R. Deo, learned Counsel for the respondent.

2. On 10-3-2025, following order was passed.

Heard.

2. *Challenge is to order dated 09.01.2025, passed by
District Judge – 2, Nagpur in Arbitration Case
No.150/2023. The impugned order reads thus:*

*“In view of pursis from the applicant at Exh. 14
and joint pursis from both parties at Exh. 15, both
parties are requested to cooperate the court to
decide the main application within 3 months. If
applicant fails to make submission within one
month from the date which will be fixed on
consensuses of both parties, the respondent would
be at liberty to execute the award. But if the
applicant cooperates and make submission within
one month as noted above, the respondent shall
not proceed with the execution of award.*

*Mater is kept for hearing day to day from
21/01/2025 to 24/01/2025 as per convenience of
both the parties.”*

3. *I have gone through the contents of Exhs.14 and
15. By Exh.-14, respondent herein stated that it does not*

wish to press the application for grant of stay. By Exh.-15, the parties jointly tendered pursis stating therein that they would extend full cooperation for expeditious final disposal of the case, meaning thereby that the parties intended to get the arbitration case decided finally, without insisting for adjournment. It appears that in terms of the aforesaid understanding, the learned District Judge fixed the matter for argument of respondent during the period from 21.01.2025 to 24.01.2025 and, accordingly, the respondent has made its submissions. Thereafter, the matter was fixed on 07.02.2025 for petitioner's argument. In the meantime, the Presiding Officer came to be transferred. His successor was on leave on 07.02.2025 and the matter came to be fixed for argument on 21.02.2025. On that date also, the matter was not heard and the matter is adjourned for hearing.

4. Learned Senior Counsel submits that in view of the transfer of the earlier Presiding Officer, his successor will have to re-hear the argument of the respondent and, thus, the purpose of filing pursis Exhs. 15 is defeated. He submits that in the impugned order, learned Judge has ordered that if the applicant (respondent herein) cooperates and makes submission within one month, the non applicant (petitioner) shall not proceed with the execution order. Learned counsel submits that this order was uncalled for and the petitioner's right of execution of the decree could not have been infringed taking aid of the contents of Exhs. 14 and 15.

5. In my view, the arrangement made by the parties before the earlier Presiding Officer has lost its seriousness. The successor appears to be not taking up the matter as was agreed by and between the parties and as approved by the Court.

6. In the circumstances, the question is, whether the persons like the petitioner could be prevented from executing the decree. Prima facie, the answer would be in the negative. However, let the final outcome be reserved by giving an opportunity to the other side.

7. Issue notice to the respondent returnable in three weeks.

8. Hamdast granted.

9. *In the meantime, learned District Judge – 2, Nagpur who is hearing the matter, shall proceed further in the light of what was agreed by and between the parties in terms of joint pursis Exh.-15 and shall file report of the progress within two weeks from today.*

10. *Copy of the order be served on learned District Judge – II, Nagpur.*

11. *All concerned to act upon the authentic copy of the order.”*

3. As could be seen, I was informed that the parties, by filing joint pursis, intended to get the arbitration case finally decided without insisting for adjournment. The learned District Judge had accordingly fixed the program for argument. The respondent had argued its case during the period from 21-1-2025 to 24-1-2025 and thereafter the matter was said to be fixed on 7-2-2025 for petitioner's argument. In the meantime, the Presiding Officer was transferred. His successor was on leave on 7-2-2025. The matter was accordingly fixed for argument on 21-2-2025 and on that day also, the matter was not heard. Thus, this Court was made to believe that the Presiding Officer, who took over the charge in February, 2025, was not taking up matter as was agreed by and between the parties which arrangement was approved by the Court.

4. Mr. Deo, learned counsel for the respondent submits that certain vital facts have been not disclosed to this Court and, therefore, the aforesaid impression has been created that the learned Judge is not taking up the matter. He has tendered across the bar pursis stating therein as to what transpired before the District Court. The copy of roznamas is annexed with the pursis.

5. It appears from the roznamas that respondent's counsel argued the case on 21-1-2025 and 22-1-2025. As such, the argument was concluded in the first session of 22-1-2025.

It was then the turn of the petitioner to argue the case. The petitioner's counsel sought adjournment on the ground that the arguing counsel is busy in High Court and will argue the matter on 24-1-2025. Accordingly, the District Court fixed the matter on 24-1-2025 when another application for adjournment came to be filed by the petitioner on the ground that the Director of the company has undergone bypass surgery and is advised bed rest and accordingly, sought 15 days time to argue the matter. In view of such request, the matter came to be adjourned to 7-2-2025.

6. Thus, the matter was adjourned at the instance of the petitioner. The petitioner therefore, failed to argue the matter in terms of joint pursis tendered by the parties. Surprisingly, the petitioner approached this Court on 6-2-2025 and, therefore, could not have anticipated that on 7-2-2025, the Presiding officer will be on leave or that he will not take up the matter for hearing.

7. Be that as it may, on 7-2-2025, the petitioner filed pursis before the District Court stating therein that they had approached the High Court. Thus, the petitioner failed to stick to the commitment recorded in the joint pursis and in a way, sought adjournment by pointing out to District Court that writ petition is pending. Accordingly, the District Court fixed the matter on 21-2-2025. The petitioner again sought adjournment. The District Court then fixed the matter on 10-3-2025. It was then, that the petitioner got the present petition circulated and accordingly, the petition was heard on 10-3-2025, when the above picture was depicted.

8. Thus, it is evident that the petitioner has unnecessarily created a story that the succeeding officer was not taking up the matter as was agreed by and between the parties.

9. Mr. Mishra, learned Senior Counsel submits that the basic grievance of the petitioner is against the order dated 9-1-2025 to the extent it prohibits petitioner to execute the award, which amounts to granting stay to the money decree without directing the respondent to deposit any amount which runs contrary to the mandate under Order 41 Rule 5 of the Civil Procedure Code, 1908 (for short 'the Code').

10. I do not find any merit in the argument in as much as by filing joint pursis, the parties intended to get the arbitration case decided finally, meaning thereby that, the petitioner would not press for execution of award. The order dated 9-1-2025 will have to be, therefore, understood in the backdrop of the arrangement made by the parties for expeditious disposal of the case.

11. The District Court has, in a way, protected the interest of the petitioner by putting a condition that if respondent fails to argue the matter within one month, the petitioner would be at liberty to execute the award and if argued, the petitioner will not execute the award. This would not amount granting stay to execution of award because the remaining part of argument was to be made by the petitioner, which it could have done on 21-1-2025 or immediately thereafter, and in such eventuality, the question of executing award would not have arisen. Even otherwise, the order stands justified if read with proviso to sub-rule (3) of Rule 1 of Order 41, Bombay Amendment.

12. The petitioner did not argue the matter as promised, instead a picture was created that succeeding officer is not taking up the matter as was agreed. Further, the petitioner has suppressed that at it's instance, the matter before the earlier Presiding Officer came to be adjourned. Had the petitioner argued the case as agreed, the earlier Presiding

Officer would have disposed of the same before his transfer. That apart, the succeeding officer was also willing to take up the matter. There is nothing on record to show that petitioner has either invited the District Court's attention to the joint pursis or made any attempt to act in terms of the said pursis.

13. Mr. Mishra submits that since the Presiding Officer was transferred, the respondent will have to re-argue the matter. True it is that, respondent will be required to re-argue the matter, however, this fact ought to have been brought to the notice of the succeeding officer, instead a pursis was filed stating that order passed by his predecessor has been challenged before this Court.

14. Such conduct is highly deprecable. The petitioner has, for no valid reason, approached this Court and, further created a picture of succeeding officer not taking up the matter by concealing vital facts. Thus, the petitioner has not approached this Court with clean hands. The petition is liable to be dismissed with exemplary costs. The petition is accordingly dismissed with costs of Rs. 1,00,000/- to be paid to the respondent within fifteen days from today. The costs shall be deposited before the District Court concerned.

15. At this stage, both the parties have shown willingness to argue the matter before the Court below in time bound manner and requested to fix the programme. Let the request be made before the Court concerned, who will consider the same as deems appropriate.

16. All questions are kept open.

17. At this stage, learned counsel for respondent submits that the District Court has fixed the matter today for argument of respondent. If that be so, the respondent may

request for adjournment. Mr. Mishra, learned Senior Counsel submits that the petitioner has no objection for such request.

18. The parties shall communicate this order to the District Judge concerned.

19. The petition is disposed of in above terms.

(Anil L. Pansare, J.)

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