IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL EXECUTION APPLICATION NO. 65 of 2024

ATLANTAA LIMITED …APPLICANT

V/s.

STATE OF MAHARASHTRA …RESPONDENT

Mr.S Murlidhar, Senior Advocate a/w. Ms.Aparna Devkar and Ms.Pallak Bhagar, Advocate for the Applicant/Award Holder.
Mr.A.A Kumbhkoni, Senior Advocate, Special Counsel a/w. Ms.Jyoti Chavan, Addl.G.P. and Mr.Vikrant Parshurami, AGP for the Respondent State.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 18th DECEMBER 2025
PRONOUNCED ON : 05th JANUARY 2026

ORDER:

1. By this Commercial Execution Application, the Applicant/Award Holder is seeking to execute paragraph 21 of the Arbitral Award dated 12th May 2012.

2. The award holder is a public limited company registered under the Companies Act, 1956 carrying on business of infrastructure development and the Respondent is the State of Maharashtra.

3. On 12th April 1999, the award holder bid for a Build, Operate and Transfer Basis (“BOT basis”) tender invited by the Respondent for the work of construction of Mumbra Bypass off Mumbai Pune Road, National Highway No. 4 from Km. 133/800 and joining the existing Mumbai Pune Road at Km. 138/200 in Thane District (the “said work”) which was accepted by the Respondent by letter dated 26th May 2000.

4. On 12th July 2000 the Concession Agreement was entered into between the Execution Applicant and the State of Maharashtra for a period of 6 years and 9 months which was extended to 10 years, 4 months and 25 days by a Supplementary Agreement dated 11th May 2005. The work was completed in 7 years, 4 months and 7 days.

5. As disputes between the Award holder and the Award Debtor – State arose which could not be settled by following the procedure for settlement, the Award holder invoked arbitration for resolution and appointed its arbitrator. The Respondent – State appointed its arbitrator thereafter and the two arbitrators appointed the third and the presiding arbitrator by mutual consent. After considering the pleadings, appraising and appreciating the evidence, the following award was passed :

(a) We hold that the Claimant is entitled to get from the Respondent an aggregate sum of Rs.58,59,31,595/- (on account of claims as set out in the Chart in para 29) with interest at the contractual rate of 20 percent per annum on the said amount from 1st October 2009 (the date of commencement of the arbitration) to the date of payment/realization and order;

(b) We further hold that the Respondent is liable to pay to the Claimant a sum of Rs.41,00,000/- by way of costs of the arbitration;

(c) Since in terms of Contract, the Respondent is entitled to extend the concession period on account of reimbursement of amount due to the Claimant, we order and direct the Respondent to work out the period for which the Claimant is entitled to extension of the concession period on the basis of the cash flow submitted by the Claimant in their statement of claims and facts (Annexure CA-VII, page 88 and onwards of CD-I) taking into account the amount determined as payable to the Claimant in terms of clauses (a) and (b) above and to issue the Gazette Notification extending concession period by period so determined within two months from the date of the award;

(d) We also order and direct that in the event of the failure of the Respondent to extend the concession period as directed in (c) above within two months from the date of this award, the Respondent shall pay to the Claimant within one month thereafter the sum of Rs.58,59,31,595/- with interest at the contractual rate of 20 percent per annum on the said amount from 1st October 2009 to the date of payment/realization and a sum of Rs,41,00,000/- by way of costs of the arbitration.

(e) All other claims and counter-claims are rejected.

6. It is not in dispute that pursuant to a series of challenges, way up to the Hon'ble Supreme Court, the order dated 12th February 2014 of a Single Judge of this Court setting aside the award in respect of the claims for compensation on account of reduced productivity of plant and machinery due to extension of construction period, compensation payable on account of subsequent legislation and reimbursement of royalty charges respectively in the sums of Rs.4,94,27,000/-, Rs.8,38,61,545/- and Rs.1,96,18,000/- and confirming the rest of the award for the sum of Rs.43,30,25,000/- together with interest and costs awarded thereby reducing the awarded claim from Rs.58,59,31,595/- to Rs.43,30,25,000/- has attained finality.

7. However, since the award was not satisfied, the Applicant/award holder filed Commercial Execution Application No. 1402 of 2018 (the "first execution application") seeking execution of the Award dated 12th May 2012.

8. On 27th June, 2018 this Court, while considering the first execution application of the Applicant/award holder noted that the operative portion of the Award stated that the amount was to be payable if the Respondent did not extend the concession period under the BOT Contract and the next portion of the operative clause stipulated interest at the contractual rate of 20% per annum annually on the said amount from 1st October 2009 till the date of payment.

9. Thereafter, on 07th August 2018, this Court rejected the prayer of the Applicant/award holder for compound interest at the rate of 20% per annum on the awarded sum. This Order was assailed before the Hon'ble Supreme Court and the said challenge was also dismissed by Order dated 25th July 2024.

10. Admittedly, the Respondent-State has paid a total sum of Rs.152,40,71,919/- by 12th September 2018 in the said Commercial

Execution Application No.1402 of 2018, which was disposed of vide Order dated 28th August 2018.

11. This Commercial Execution Application has been filed on 30th September 2024, as noted above, seeking execution of paragraph 21 of the Award dated 12th May 2012 and warrants of attachment came to be issued.

12. By Order dated 30th January 2025, this Court in Interim Application (L) No. 3000 of 2025, lifted the three warrants of attachment dated 19th December, 2024 issued by this Court in respect of movable and immovable property of the Respondent. The said Interim Application has been disposed of vide Order dated 06th November 2025 and this Commercial Execution Application was listed for hearing on 11th December 2025. On 11th December 2025, Mr.Kumbhkoni, learned Senior Counsel appearing for the Respondent – State had raised an objection as to the maintainability of the Execution Application and made submissions in this regard. Mr.Murlidhar for the Applicant had also responded to the same and the orders on the issue of maintainability of the Execution Application were reserved with liberty to file written submissions within a period of two weeks.

Thereafter, the matter was listed under the caption 'for pronouncement' on 18th December 2025. However, when the matter was called out on that day, Ms.Aparna Devkar, learned Counsel appearing for the Applicant had submitted that this Court had granted two weeks' time to file written submissions, which two weeks were to expire on 25th December 2025, therefore, this Court list the matter for pronouncement on reopening. As the learned AGP appearing in the matter had no objection, this Court has listed the matter today for pronouncement after directing that the written submissions on behalf of the Applicant be accepted and a copy of the same be furnished to the learned AGP.

13. I have heard the learned Senior Counsel and considered the rival contentions. Since on behalf of the Respondent an objection as to the maintainability of this Execution Application has been raised, this Court proceeds to consider the same.

14. It is not in dispute that it is after the disposal of the first Execution Application, this Execution Application has been filed. What the Applicant is seeking to do by this second Execution Application is to separately execute paragraph 21 of the arbitral award dated 12th May

2012 purportedly on the basis that the same is an undisputed amount payable by the Respondent – State.

15. Objecting to the maintainability of these execution proceedings, Mr.Kumbhkoni, learned Senior Counsel appearing for the Respondent – State has submitted that the execution proceedings are the most frivolous execution proceedings, as to claim an observation in execution without anything more and which has not at all fructified into a decree, order, direction and/or award is enforceable in law and therefore this alleged undisputed and/or admitted 'claim' simplicitor cannot be entertained and ought to be rejected.

16. Mr. Kumbhkhoni has submitted that not just *prima facie*, but *ex-facie* also not even a single farthing/penny is any more payable to the Applicant, the Applicant is concededly not seeking execution of any decree, order, and/or award or even a finding but enforcement of paragraph 21 of the award which cannot be said to be enforceable.

17. Mr. Kumbhkoni has submitted that an analysis of the paragraph 31 of the Award demonstrates that the operative portion has been divided by the Tribunal itself into clauses (a) to (d). The clauses (a)

and (b) contained in paragraph 31 are not by themselves 'executable' whereas the clauses (c) and (d) are certainly executable. Mr. Kumbhkoni has pointed that the amount quantified in clause (d) is identical to the one mentioned in clause (a) thereof and therefore, the claim made by the Applicant in these execution proceedings has already stood rejected by the award itself which has been executed and disposed of by Order dated 28th August 2018.

18. Mr. Kumbhkoni has submitted that a meaningful reading of the entire award with its operative part leaves no manner of doubt that the Applicant is only entitled to receive Rs.58,59,31,595/-, which was reduced to Rs. 43,40,25,000/- by this Court in Section 34 petition which was confirmed till the Hon'ble Supreme Court plus Rs.41,00,000/- with specified interest and nothing more or nothing less.

19. Mr. Kumbhkoni has submitted that admittedly the entire amount along with interest being Rs.152,40,71,919/- has been fully and finally paid on 12th September 2018 as result of the first execution application, which has been admitted by the Applicant.

20. Mr. Kumbhkoni has submitted that the Applicant has never sought any decree, order, and/or award or even a finding or a direction for the enforcement of this alleged admission of undisputed claim in the proceedings initiated under Section 34 and Section 37 or the Hon'ble Supreme Court.

21. Mr.Kumbhkoni has submitted that in fact, had there been any undisputed claim as contended by the Applicant, the same would have certainly been part of the operative part of the award in issue. In such a case the Arbitral Tribunal would have divided the operative part of the award into two parts, one relating to the alleged undisputed claim and the other relating to the disputed claim and would have issued order or direction to the Respondent to comply with it, which is not the case in hand.

22. It is submitted that, even if, without admitting and for the sake of argument it is considered that the award in issue ought to have, but does not contain any direction or order to pay the alleged undisputed claim, the remedy for the Applicant lied, if at all and if any, somewhere else and certainly not in this Court, that too by way of execution proceedings as presently initiated.

23. Mr.Kumbhkoni has submitted that moreover, the Applicant did file Commercial Execution Application No.1402 of 2018 seeking execution of the very same arbitration award dated 12th May 2012, wherein, concededly, the Applicant did not even whisper about such a claim that has now been made by the present execution proceedings. Had the Applicant been in fact and in law entitled to the amount as presently claimed by the present proceedings, which by any standard is huge/substantial and not trivial/negligible, being about Rs.737 crore, the Applicant would have certainly claimed the same in the aforesaid first execution proceedings itself. That, there is a studied silence on the part of the Applicant for not making such a claim during the aforesaid first execution proceedings itself and for making such a claim for the first time by way of present proceedings filed on 30th September 2024, and that too after having received the entire amount of Rs.152,40,71,919/- due and payable in terms of the arbitral award in issue on 12th September 2018 as pointed out at page 263, as a result of the aforesaid first execution proceedings.

24. Mr. Kumbhkoni has submitted that the Applicant cannot enforce recommendations for extension of concession period as the same cannot be considered a decision enforceable in law, and if any decision

is taken by the State Government for grant of extension of concession period, an appropriate notification is required to be issued and that even for non-issuance of a notification for the alleged extension of the concession period, the remedy is not an execution application.

25. Mr.Kumbhkoni has submitted that the clause (d) of the award in issue specifically deals with the situation that has arisen on account of the non-issuance of the notification for the extension of the concession period, contemplated by the earlier cause (c) thereof. Therefore, there is no scope at all for this Court in the present execution proceedings, to go into any issue relating to the consequences that ought to follow on account of the non-issuance of the notification as alleged or even otherwise. Mr.Kumbhkoni has submitted that this Court, as an executing Court, cannot at all rewrite the award in issue by introducing therein any additional provision for payment, as claimed by the Applicant or even otherwise. This is more so since not only the award in issue has attained finality but also since it has been finally and fully satisfied as set out herein.

26. Mr.Kumbhkoni has further submitted that the Applicant by the present execution proceedings is directly attempting to enforce the

alleged “recommendations” simplicitor of the Superintending Engineer for extending the concession period up to 24 years, 1 month and 17 days. It is submitted that first and foremost, assuming there are such “recommendations” as alleged, the same are after all just “recommendations” and not ‘decisions’ of the Respondent. Merely by Applicant, in the Affidavit under reply, using the terms “recommendations” and ‘decisions’ in the alternative to each other cannot make such alleged ‘recommendations’ a ‘decision’ of the Respondent. Learned Senior Counsel has submitted that whenever, any decision is taken by the Respondent State Government for grant of extension of concession period in such cases, an appropriate notification is required to be issued and is in fact always issued. Admittedly, such a notification was never issued by the Respondent granting such extension to the Applicant as allegedly ‘recommended’. It has been emphatically submitted that the Respondent has never accepted such alleged ‘recommendations’ and has never ‘decided’ to extend the concession period as alleged or even otherwise.

27. Mr. Kumbhkoni has submitted that the Applicant cannot initiate and prosecute execution in installments and the present proceedings

are clearly an afterthought, after recovering the entire amount due and payable in terms of the Award.

28. Mr. Kumbhkoni has submitted that as the State Government has opted for not extending the concession period as per the award as mentioned in clause (c) thereof but has complied and satisfied the Award in terms of clause (d) read with order dated 12th February 2015 by making the payments, therefore, the execution sought of the alleged undisputed claims cannot be granted by this Court and ought to be rejected.

29. Mr.Kumbhkoni has submitted that further, the Applicant has, in categorical terms has stated on oath, in the present Affidavit thus : "I say that the said undisputed component of the claim was subsumed in the final award." With such a categorical case, in the light of the indisputable fact that the award has been fully and finally satisfied, as a result of the aforesaid first execution proceedings initiated by the Applicant, it is beyond imagination that the recovery of the alleged 'undisputed claims' still survives, even for its consideration. Mr.Kumbhkoni has submitted that such a frivolous claim for the direct recovery of alleged 'undisputed claim' cannot be entertained and/or

considered, even for the purpose of its rejection. Learned Senior Counsel has submitted that the objection of the Respondent in this case is fundamental for even consideration and/or entertaining of such an attempt to recover such astronomical amount of about Rs.737 Crore, that too from public funds, in the indisputable total absence of any decree, order and/or award directing the Respondents to pay the same to the Applicant.

30. Mr.Kumbhkoni emphatically asserts that even otherwise the award passed in favour of the Applicant, as modified by the Appellate fora, relating to the project in issue, has been fully and finally satisfied, each and every paisa/penny payable thereunder, to the Applicant, has already been paid by the Respondent, and that nothing at all is due and payable to the Applicant by the Respondent, towards anything whatsoever. That, the Respondent has paid a total sum of Rs 152,40,71,919/- to the Applicant in the aforesaid earlier Commercial Execution Application No.1402 of 2018. That, the aforesaid amount is paid as per the interest calculated by this Court in the said Commercial Execution Application no.1402 of 2018 which has been confirmed in Appeal no.378 of 2016 and Appeal no.395 of 2016 and also by the Hon'ble Supreme Court.

31. Mr.Kumbhkoni has submitted that the orders passed by this Court in the aforesaid earlier filed Commercial Execution Application no.1402 of 2018 and the Order passed by this Court in Appeal nos. 378 of 2016 and Appeal no.395 of 2016 show that this Court has specifically observed that in the Award the amount payable by the Respondent to the Applicant has been quantified for calculation of extension of concession period and this Court has further observed that in case of failure on part of the State Government to notify the concession period, the State Government was liable to pay to the Original Claimant i.e. the Applicant herein the amount as quantified in clause (c) of the Award, which was reduced by this Court in Arbitration Petition (Lodg.) No. 1542 of 2014 to sum of Rs. 43,30,25,000/-. The State Government has opted for not extending the concession period as per operative part of the award in issue viz. the clause (c) thereof but has complied and satisfied the Award in terms clause (d) read with Order dated 27th October 2014/12th February 2015 passed in Arbitration Petition (Lodging) No. 1542 of 2014. Mr.Kumbhkoni has submitted that a conscious decision was taken by the Respondent to pay the awarded amount to the Applicant instead of extending the concession period, *inter alia* in view of the submissions made by the concerned officer.

32. Mr.Kumbhkoni has further submitted that the distinction tried to be drawn between the 'construction period' and 'concession period' and the extensions thereof leads the Applicant nowhere. The operative portion of the Award in issue specifically holds that the Claimant i.e. the Applicant herein is entitled to get from the Respondent "an aggregate" sum of Rs.58,59,31,595/-..........". That, therefore, it is not at all open for the Applicant to even contend that the Applicant is entitled to any amount in addition thereto on any count/head/reason whatsoever. It is impermissible, in law, in the execution proceedings to even 'entertain' such a grievance/contention as the same will amount to going behind/beyond the Award sought to be executed.

33. Mr.Kumbhkoni has submitted that this is more so in view of the specific, categorical portion of the clause (e) of the Award at hand which in most certain and emphatic language states :

> "All other claims and counter-claims are rejected"

34. Mr.Kumbhkoni, learned Senior Counsel for the Respondent-State has submitted that, therefore, the most frivolous present execution proceedings be dismissed as not maintainable with exemplary costs that are commensurate with the claim of about Rs. 736.86 crore.

35. On the other hand, Mr.Murlidhar, learned Senior Counsel appearing for the Applicant has submitted that although the Commercial Execution Application No. 1402 of 2018 with respect to the award was disposed of on 28th August 2018, however, paragraph 21 of the arbitral award has remained to be satisfied and therefore this execution application has been filed. Mr. Murlidhar has submitted that in accordance with paragraph 21 of the award as upheld by the Hon'ble Supreme Court of India and confirmed by the learned Singh Judge, claim of Rs.245,44,00,000/- along with interest at the rate of 20% per annum of Rs.491,41,79,507/- from 21st September 2014 till 21st September 2024 aggregating to Rs.736,85,79,507/- with further interest at the rate of 20% per annum on Rs.245,44,00,000/- from 22nd September 2024 till realisation is the amount due to the Applicant in respect whereof this execution application has been filed.

36. Mr.Murlidhar, learned Senior Counsel appearing for the Applicant has submitted that earlier on 5th December 2007 the Award holder had submitted all the claims to the Superintending Engineer and claimed concession period of 53 years 3 months and 12 days. Certain claims were accepted by the Superintending Engineer and the Superintending Engineer awarded extension of the concession period of 24 years 1

month and 17 days and accordingly the Respondent - State was requested to notify the revised concession period. Mr.Murlidhar has submitted that as the Applicant requested for an extension up to 31st November 2053 but it's request was accepted only for undisputed claims for a period of 24 years 1 month and 17 days, and therefore, the arbitration was invoked by the Applicant on 1st October 2009. And that, on 12th May 2012, the arbitral award was published. That, the Respondent – State issued a provisional notification on 26th February 2010 for extending the concession period up to 21st September 2014, however instead of complying with the arbitral award and extending the concession period for 24 years 1 month and 17 days viz. the undisputed claims, the Respondent – State took over the toll facility on 22nd September 2014 upon lapse of the provisional notification, however, admitting that even the Appeals under Section 37 of the Arbitration and Conciliation Act, 1996, filed by the Applicant were disposed on 4th May 2018.

37. Mr.Murlidhar has strenuously urged that the Tribunal has bifurcated the award into two parts : the undisputed claims and the disputed claims. That, in paragraph 21, the Tribunal has decided the entitlement of the Claimant to the extension of the concession period

and regarded the issue as undisputed as the Respondent did not deny the same having been recommended by the Respondent on the basis of cash flow whereas in paragraph 29 the Tribunal has tabulated the disputed claims and in paragraph 31, which is the operative part of the award, the Tribunal has granted both the claims viz. the undisputed i.e. extension of the concession period on the basis of cash flow and also the disputed claim viz. the monetary claim amounting to Rs.58,59,31,595/- plus Rs.41,00,000/- towards costs of arbitration for the disputed claims. That, the same is pertinent as on 18th July 2012 the Respondent – State prepared a cash flow for 40 years 6 months which included the recommended extension of 24 years 1 month and 17 days and considering the awarded amount of Rs.58,59,31,595/- and Rs.41,00,000/- as the costs of arbitration, Mr.Murlidhar has submitted that thus the extension of concession period is worked out to 16 years 4 months and 13 days.

38. Mr. Murlidhar has submitted that the execution application is only to the extent of the claim which has remained undisputed between the parties and which the Respondent has admitted throughout the arbitration proceedings. Mr. Murlidhar submitted that the undisputed component of the claim was subsumed in the final award; that the

award to the extent of the disputed claims has been satisfied to the extent of INR 43.08 crores in the first execution proceedings, however the execution Applicant has now filed this execution application for the undisputed amounts after the award has attained finality vide the decision of the Hon’ble Supreme Court dated 25th July 2024.

39. The State deposited the amount along with accrued interest in the earlier execution proceedings on 28th August 2018 and the Applicant was granted liberty to withdraw the sum without prejudice to all the rights and contentions which it has in fact withdrawn on 12th September 2018. Mr.Murlidhar has submitted that the very fact that the withdrawal was without prejudice to all the rights and contentions of the applicant is itself indicative that the same was with respect to the undisputed claim. Mr.Murlidhar has submitted that, therefore, by order dated 25th July 2024, the Hon'ble Supreme Court has upheld the award clarifying that they have not commented on any other portion of the impugned judgment.

40. On the basis of the above, Mr.Murlidhar has submitted that the Execution Application is maintainable and that this Court may direct

execution for recovery of undisputed claims in paragraph 21 of the award.

41. Mr.Murlidhar has submitted that the intention of the Tribunal is clear in the operative part wherein, the Tribunal was pleased to direct the State to work out the period for which the Applicant/award holder was entitled to extension of the concession period on the basis of the cash flow submitted by the Claimant in their Statement of Claims and facts, taking into account the amount determined as payable to the Claimant in terms of clause (a) and (b) above to issue the Gazette Notification extending concession period so determined within 2 months from the date of the award.

42. Mr.Murlidhar has submitted that, firstly the awarded amount under the Award dated 12th May 2012 was never in lieu of prayer of extension of concession period. It is submitted that the State was ordered and directed to extend the concession period as per the cash flow and issue a gazette notification, on the basis of cash flow statement, after considering the awarded amount of Rs.58,59,31,595/- along with cost of Rs.41,00,000/-. Thus, the State was directed to extend the concession period, after factoring the awarded amount of

the disputed claim as per paragraph 31 (a) and (b). Learned Senior Counsel has submitted that the Applicant kept on insisting with the authorities of the Respondent for issuance of notification and the authorities kept on refusing to do so.

43. Mr. Murlidhar has submitted that the State not having complied with paragraph 31(c) of the award in lieu of taking over the toll facility on 21st September 2014, the decree for this amount has remained unsatisfied. Mr Murlidhar has submitted that the amounts paid by the State were accepted without prejudice to the rights of the Applicant as recorded in Order dated 28th August, 2018 and therefore the decree was never marked as satisfied and submitted that therefore this Execution Application is maintainable.

44. I am afraid, I am unable to agree with Mr.Murlidhar. There is no bifurcation of undisputed or disputed claims and even assuming there was a discussion, paragraph 31 is the award. And it is not in dispute that all the challenges to the award have been negated and that the award has been upheld way up to the Hon'ble Supreme Court and the Applicant has also received the monies under the award although a formal satisfaction may not have been recorded.

45. Paragraph 21 of the Award in respect of which the Applicant has filed these execution proceedings reads thus:

> *“21.Whether the Claimant is entitled to extension of concession period as claimed ? If so, to what extent ?*
> *2.1. The Claimant has relied upon several Agreement Clauses viz., 3.6.3, 3.6.6, 3.7.11, 3.7.24, 3.7.34, 3.8.1 and 3.9 which stipulate extension/adjustment of concession period if there is a variation, escalation, new legislation, change in interest rates etc. The Claimant has as well furnished revised cash flow based on claims as per Form No. 3 of the Concession Agreement. The Respondent has not objected to the extension of concession period as per the cash flow by using Form No.3.*
> *21.2 The Claimant has claimed concession period of 53 years 3 months and 12 days by incorporating the claims made in the relevant years and taking into consideration the toll rates as per GR of 9th January, 2003. The Respondent had recommended to the Finance Department extension of concession period for a period of 24 years 1 Month and 17 days as pet Exhibit C-99 at Page 469 of CD-III using the cash flow as per Form No.3.*
> *21.3 In order to answer this issue, besides the claims of compensation considered under point for determination No. (c) above, it is necessary to decide first the balance claims submitted by the Claimant and disputed by the Respondent on merits thereof. These claims are considered hereunder:”*

46. As can be seen, paragraph 21 does not contain any order or award or finding or a direction and even if it is held to be ‘recording’ by the Arbitral Tribunal of an admission of the State as to the entitlement of the Applicant for extension of the concession period as per the cash

flow by using Form No.3 or of a recommendation of the State, the same certainly cannot be enforced through these execution proceedings as there is no order or award or a finding or a direction to that effect by the Arbitral Tribunal. The Arbitral Tribunal has in paragraph 31 clearly made the award that has admittedly been paid and there is no quarrel about the same. Paragraph 31 as can be seen is the award and not paragraph 21.

47. I agree with Mr.Kumbhkoni, learned Senior Counsel appearing for the State that a careful analysis of the said paragraph 31 demonstrates that the operative portion contained therein has been divided by the Arbitral Tribunal itself into clauses (a) to (d). Clauses (a) to (b) of the paragraph 31 are findings simplicitor, since the same specifically use the words “hold that” in contradistinction with the remaining clauses (c) and (d), which use the words ‘order and direct’. Thus, the clauses (a) and (b) contained in the aforesaid paragraph 31 are not by themselves ‘executable’, whereas the clauses (c) and (d) are certainly executable. Clause (c) thereof does refer to clauses (a) and (b), but it is only for the purpose of identification / quantification of the amounts mentioned therein. Therefore, the amount quantified in clause (d) is identical even to the last digit as mentioned in clause (a)

thereof. That, therefore, clause (a) records a categorical finding as to the exact amount that is finally and totally due and payable to the Applicant, the Claimant in the arbitration proceedings by the Respondent, since the word specifically used is "aggregate sum". Moreover clause (e) clearly indicates that all other claims and counterclaims are rejected. Any other claim made by the Applicant in these execution proceedings had already stood rejected by the award itself which has been executed by Commercial Execution Application No.1402 of 2018 and also disposed of by order dated 28th August 2018. Therefore, the question of the purported admission contained in paragraph 21 being executed independent of paragraph 31 does not and cannot arise.

48. It is not in dispute that the orders passed by this Court in the aforesaid earlier filed Commercial Execution Application no.1402 of 2018 and the Order passed by this Court in Appeal nos. 378 of 2016 and Appeal no.395 of 2016 show that this Court has specifically observed that in the operative part of the Award the amount payable by the Respondent to the Applicant has been quantified for calculation of extension of concession period and this Court has further observed that in case of failure on part of the State Government to notify the

concession period, the State Government was liable to pay to the Original Claimant i.e. the Applicant herein the amount as quantified in clause (c) of the Award, which was reduced by this Court in Arbitration Petition (Lodging) No. 1542 of 2014 to sum of Rs. 43,30,25,000/-. The State Government has opted for not extending the concession period as per operative part of the award in issue viz. the clause (c) thereof but has complied and satisfied the Award in terms of clause (d) read with Order dated 12th February 2015 passed in Arbitration Petition (Lodging) No. 1542 of 2014. A conscious decision was taken by the Respondent to pay the awarded amount to the Applicant instead of extending the concession period, *inter-alia* in view of the submissions made by the concerned officer.

49. Since the award at clause (a) specifically holds that the Applicant herein is entitled to receive from the Respondent such an aggregate sum of Rs.58,59,31,595/- less ofcourse the amount as reduced by this Court by order dated 12th February 2014, it would not be open for the Applicant to contend that the Applicant is entitled to any amount in addition on any count, and therefore, the distinction attempted to be drawn between the construction period and concession period is only an endeavour to obfuscate the matter in a bid to reopen a closed

matter, which in any event, the Executing Court cannot entertain nor go behind.

50. This is more so particularly in view of the specific, categorical portion of the clause (e) of the Award where it is stated that : "*All other claims and counter-claims are rejected*."

51. Mr.Kumbhkoni is right that a reading of the aforesaid entire judgment, with its award in paragraph 31 leaves no manner of doubt that the Applicant herein is held entitled to receive nothing more, nothing less, than Rs.58,59,31,595/- plus Rs.41,00,000/- with specified interest, which basic amount of Rs.58,59,31,595/- as noted earlier had been, thereafter, reduced to Rs.43,30,25,000/- by this Hon'ble Court in Section 34 proceedings arising out of the Award at hand, and confirmed till Hon'ble Supreme Court.

52. It is an admitted position that the previous Execution Application No.1402 of 2018 seeking execution of the arbitral award has been disposed of by order dated 28th August 2018. That, the Execution Applicant has already recovered Rs.1,52,40,71,919/- on 12th September 2018 by way of the said execution proceedings in respect of the very

same award dated 12th May 2012 and the said award stands fully satisfied.

53. It would be pertinent here to refer to the case of ***The Shop styled as Panaji Girdharlal by its owner Jagannath Girdharlal vs. Ratanchand Hajarimal Marwadi***[1] where this Court has held that a party having a right to execute a decree for money presently payable must enforce the whole decree at the same time. Where therefore a judgment creditor has obtained a decree for principal and interest to date of payment and costs, and has applied for execution, and executed it in respect of the principal and costs, he cannot subsequently put in a fresh application for interest only. Authored by Chief Justice Beaumont (as his Lordship then was) it was held that if piecemeal execution is permissible in India it seems to me that the party executing must show not that, that the right is forbidden by the Civil Procedure Code, 1908 ("CPC") but it is conferred by the CPC. That there is nothing in the CPC which expressly authorises piecemeal execution, and a good many of the provisions of Order XXI of the CPC, which deals with execution seem to me opposed to the idea that there can be more than one execution of a money decree. Chief Justice Beaumont went on to hold that I think if a person

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having a right to recover a certain sum under a decree asks the Court to enforce that decree for a less sum, he must be taken to waive his right to levy execution for the balance. Justice Murphy agreeing with Chief Justice Beaumont held that Rules 10 and 15 of Order XXI of the CPC suggest that what should be prayed for is the execution of the decree as a whole, and Form 6 in Appendix E seems to me to require a claim for principal and interest to be made in the same application, such a decree being essentially a money decree for the total amount in both cases.

54. I, therefore, agree with Mr. Kumbhkoni learned Senior Counsel for the State that the Applicant cannot initiate and prosecute execution in 'installments'. After recovering the entire amount due and payable in terms of the award filing this Execution Application to my mind is not only vexatious but also frivolous perhaps a case of only a chance taking litigation.

55. It is also trite law that a Court executing a decree cannot go behind the decree between the parties or their representatives and it must take the decree according to its tenor, and cannot entertain any execution application whereby the award still binding between the parties and not endeavor to re-write a decree. In the facts of this case,

the Applicant is not only asking the Court re-write the award but also to go behind the Orders upholding the finality of the award and also go behind the orders passed in the first execution. I do not see how, this Court can read into the Award in execution the claim which was not awarded by the Arbitral Tribunal and this Court in appeal and the Hon'ble Supreme Court in SLP.

56. Mr. Kumbhkoni is right that the Execution Court cannot rewrite the award for introducing any additional amount as claimed by the Applicant or even otherwise, as the award has attained finality and also has been fully satisfied and the Applicant cannot have a second bite at the same cherry undermining the finality of the award.

57. Infact, this Court (Coram : R. I. Chagla, J.) while deciding Interim Application (Lodging) No.3000 of 2025 filed by the Award Debtor seeking quashing and setting aside of the warrants of attachment, vide order dated 30th January 2025, has in paragraph 7 also made a *prima facie* observation that as the alleged undisputed claim, of which execution has been sought, has not been awarded by the Arbitral Tribunal, the present execution proceedings are not maintainable.

58. Further, the Applicant has, in categorical terms, stated on oath, in the present affidavit thus : *"I say that the said undisputed component of the claim was subsumed in the final award"*. With such a categorical case, in the light of the indisputable fact that the award has been fully and finally satisfied, as a result of the aforesaid first execution proceedings initiated by the Applicant, it is beyond imagination that the recovery of the alleged 'undisputed claims' still survives, even for its consideration. In the submission of the Respondent such a frivolous claim for the direct recovery of alleged 'undisputed claim' cannot be entertained and/or considered, even for the purpose of its rejection.

59. The Execution Applicant, therefore, cannot now seek to contend that Clause 21 of the Arbitral Award which refers to the undisputed claim of extension of concession period for 24 years 1 month and 17 days granted by the Tribunal was on the basis of the recommendation of the State and the said extension was never challenged by the State right up to the Apex Court. In my view, just because the Award has not been marked satisfied, would not make any difference.

60. This Court is, therefore, of the view that the claim of the Execution Applicant cannot be agitated by way of these execution

proceedings as the award has obtained finality. Once an award has attained finality and the execution of the same has been disposed of and the amounts due and payable are paid off, the award cannot be put into execution in second or endless number of successive rounds. In my view, therefore, these proceedings are not maintainable. Not only that, in my view, these proceedings are also frivolous and vexatious, having been filed admittedly after having received the monies under the award dated 12th May, 2012.

61. In view of the above, the Commercial Execution Application is hereby dismissed as not maintainable. Accordingly it would not be necessary to consider the other arguments of the learned Senior Counsel for the parties.

62. Since it has been observed that the proceedings are not only frivolous but also vexatious, this Court deems it appropriate to impose costs of Rs.5,00,000/- to be paid by the Applicant to the Bar Council of Maharashtra and Goa’s Advocate Academy & Research Center within a period of four weeks from the date of uploading of this order.

(ABHAY AHUJA, J.)