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

WRIT PETITION NO.122 OF 2026

PETITIONER :- M/s. D.P. Jain and Co. Infrastructure Pvt. Ltd. A Company duly incorporated under the Companies Act, 1956, having its office at U-6, Himalaya Accord Apartment, Opposite Law College, Amravati Road, Nagpur – 440 010, through its authorised signatory, Shri. Dewang Vaidya

..**VERSUS**..

RESPONDENT :- Visweswaraiah Constructions a proprietorship concern, acting through its Proprietor Shri Venkatramrao Mastanaiah Naidu Namburi, having its office at Flat No.18, Biyani Nagar, Tukum Road, Chandrapur-442 402.

Mr. C. S. Dharmadhikari, Advocate for petitioner.
Mr. Atul Pande, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 08.05.2026.

J U D G M E N T :

1) Heard finally with consent of learned advocates for the respective parties.

2) The present petition is filed challenging order dated 11.12.2025 passed by the learned District Judge-8, Nagpur on application at Exhibit 6 in Arbitration Case No.137 of 2023. By the said order, the learned District Court has granted stay to execution of Arbitral Award dated 29.01.2023 passed by the learned Arbitral Tribunal on the condition that the applicant/petitioner shall deposit 75% of the amount awarded by the learned Arbitral Tribunal within a period of 30 days from the date of order and further directing that in the event amount is not deposited, the award impugned in the proceeding would become executable.

3) The present petitioner and respondent had entered into a partnership vide partnership deed dated 08.12.2008 for undertaking business of execution of civil contracts and works relating to infrastructure. The Executive Engineer, Minor Irrigation, Chandrapur issued a work order dated 31.09.2009 in favour of a joint venture namely M/s. R. Balarami Reddy and Co. and M/s. D. P. Jain Infrastructure Pvt. Ltd. The said work was entrusted by the said joint venture to the petitioner by engaging the petitioner as a sub-contractor. The petitioner entered into a Memorandum of Understanding (for short, "the MOU") with the respondent on 05.12.2009 further subcontacting part of the work to the respondent. In terms of the MOU, entire working capital for execution of the work was to be arranged by the respondent. As per clause 7(b) and (c), the bills were submitted to the department and the payments received from the department were to be released by the petitioner in favour of the respondent after deducting 1% amount of the gross value of bill towards supervision charges.

4) The parties contend that terms of MOU were modified with respect to sub-contract on an oral understanding that instead of 1% amount to be deducted by the petitioner, 27% of the amount was agreed to be deducted from each RA bill. The contention of the petitioner is that since the petitioner had arranged for manpower, machinery, equipment etc., the amount was to be retained by the petitioner. However, the case of the respondent is that amount of 26% was allowed to be deducted in addition to 1% as agreed under the MOU on the condition that additional 26% amount would be released to the respondent at the end of the contract.

5) After hearing arguments of the respective parties, the learned Arbitral Tribunal has allowed claim of the respondent holding that the respondent/original claimant was entitled to receive amount of Rs.3,25,96,669/- from the petitioner/original respondent with interest at the rate of 10% per annum. The learned Industrial Tribunal has accepted the contention of the respondent that 26% amount was to be deducted by the petitioner/original respondent by way of security and that the said amount was to be refunded to the respondent/original claimant upon completion of the contract. The learned Arbitral Tribunal recorded such finding observing that in contracts of such nature, profit margins are generally around 10 to 15% and therefore it was difficult to accept the case of petitioner/original respondent that it was entitled to appropriate the said amount towards cost incurred for executing the contract.

6) Being aggrieved by the said arbitral award dated 29.01.2023, the petitioner filed proceeding under Section 34 of the Arbitration and Conciliation Act, 1996, which came to be registered as Arbitration Case No.137 of 2023. The petitioner filed an application for stay in the said proceeding vide Exhibit 6. The respondent filed reply strongly opposing the said application. The learned District Judge-8, Nagpur has allowed the said application vide order dated 11.12.2025 subject to condition that 75% of the amount awarded shall be deposited by the petitioner within a period of 30 days from the date of order i.e. 11.12.2025. The order further directs that in the event amount is not so deposited, the award shall become executable. The present petition is preferred under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the said order dated 11.12.2025.

7) The written agreement between the parties provided for 1% amount to be retained by the petitioner towards supervision charges. It is not in dispute that subsequently, in view of an oral understanding between the parties, 27% amount was to be deducted from respective RA bills and the said amount was to be retained by the petitioner

8) The parties have divergent stands with respect to the reason for retaining 27% of the amount. The version of the petitioner is that since the work was done with the capital, manpower and machinery of the petitioner, the said amount was to be retained by it. As against this, the case of respondent is that the amount was retained as a security. The Learned Arbitral Tribunal has accepted the version of the respondent on appreciation of the oral evidence.

9) Normally, the appreciation of evidence cannot be tested in a proceeding under Section 34. However, the learned advocate for the petitioner strongly argues that the findings are based on personal knowledge of the learned Arbitral Tribunal and that the same are arrived at without proper appreciation of evidence. The learned advocate particularly draws attention to the no dues certificate issued by the respondent and contends that the claim ought not to have been entertained in view of the said no dues certificate. He contends that the case of the respondent, who is the original claimant, with respect to the said no dues certificate lacks consistency and these inconsistent stands have not been taken into account by the learned Arbitral Tribunal. The learned advocate strongly contends that the findings are therefore perverse and a perverse finding is not immune from being examined in a proceeding under section 34. Attention is drawn to registered letter dated 23.05.2017 issued by proprietor of the respondent/claimant wherein it is contended that the no due certificate was obtained drawing unfair advantage of financial needs of the respondent/original claimant. The learned advocate then draws attention to the evidence of the respondent/claimant and contends that the stand taken in the evidence is that no due certificate was never issued.

10) The no due certificate is dated 25.01.2013. Till that stage, 12 RA bills were cleared. RA bills 13 to 25 were released after issuance of the no due certificate.

11) Learned advocate for the petitioner contends that an amount of rupees 5,08,10,303/- was received under RA bill Nos.13 to 25 along with the escalation amount. His contention is that out of the said amount, 1% amount is undisputedly to be retained by the petitioner and as such, the amount payable according to the respondent/claimant will be Rs.5,03,02,200/- It is further stated that admittedly a sum of Rs.4,09,76,936/- is paid and as such amount of

Rs.93,25,264/- remained outstanding under the 13th to 25th RA bill along with escalation. The learned advocate argues that in view of the no dues certificate, which is binding on the respondent/original claimant, amount under first 12 RA bills cannot be claimed. He therefore contends that at best, an amount of Rs.93,25,264/- will be payable to the respondent even if the case set up by the respondent that the amount was retained only as a security is accepted.

12) He therefore argues that, in the facts of the present case, unconditional stay ought to have been granted by the Learned District Court. Without prejudice to the said contention, the Learned Advocate argues that at best, some security could have been ordered to be offered with respect to amount of Rs.93,25,264/-.

13) Per contra, Mr. Atul Pande, learned advocate for the respondent vehemently argues that in view of section 36(3) of the Act, principles under Order 41 Rule 5 of the Code of Civil Procedure, 1908 are to be applied while considering an application for grant of stay to execution of a decree. The learned advocate contends that since the award is in the nature of a money decree, the learned District Judge has rightly directed the petitioner to deposit the amount in order to secure the claim of the respondent/original claimant. He contends that condition of deposit normally is a rule and to grant stay without deposit should only be by way of exception. Learned Advocate further contends that the chances of petitioner succeeding in Section 34 proceedings are very bleak since the learned Arbitral Tribunal has appreciated the evidence on record and has arrived at a conclusion which is immune from challenge under Section 34 having regard to the limited scope of interference.

14) He further argues that the no dues certificate is rightly discarded by the learned Arbitral Tribunal. The learned advocate draws attention to the order and contends that the petitioner had agreed to abide by such conditions as may be imposed and as such, now it is not open for the petitioner to contend that unconditional stay ought to have been granted.

15) I have heard the rival submissions as aforesaid. I have also perused the no dues certificate and the stand taken by the respondent/original claimant with respect to the same. Perusal of the award will demonstrate that the contention of the petitioner with respect to no dues certificate is not dealt with. The Learned Arbitral Tribunal has predominantly proceeded on the ground that the amount retained is more than the normal margins in such contracts of construction. Although the learned District Judge has recorded that effect of no dues certificate is considered by the Learned Arbitral Tribunal, *prima facie,* it does not appear that contention with respect to no dues certificate is dealt with.

16) I am also prima facie in agreement that there is inconsistency with respect to the stand taken by the respondent/claimant with respect to no due certificate.

17) The figures with respect to RA bill Nos.1 to 12 and 13 to 25 including the escalation are not disputed. Having regard to the statement that is placed on record by the learned advocate for the petitioner, as also having regard to the no due certificate which is issued, in my considered opinion, ends of justice will be subserved if 75% of the amount of Rs.93,25,264/- is ordered to be deposited with the learned District Judge and for the balance claim amount the petitioner is directed to furnish solvent surety to the satisfaction of the learned District Judge or such officer of the District Court as the Learned District Judge may deem fit to designate. In view of the aforesaid, the petition is partly **allowed** as under:-

I. Order dated 11.12.2025 passed by the Learned District Judge-8, Nagpur on Exhibit-6 in Arbitration Case No.137 of 2023 is modified by directing that the execution, operation and implementation of the Arbitral Award dated 29.01.2023 shall remain stayed till final disposal of Arbitration Case No.137 of 2023 subject to the condition that the petitioner deposits an amount of Rs.69,93,948/-, being 75% of amount of Rs.93,25,264/-, with the learned District Judge on or before 15.06.2026 and furnishes solvent surety for the balance claim amount i.e. Rs.2,56,03,721/- on or before the said date.

II. Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

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