2026:AHC:208539

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 13391 of 2026

M/S Satish Construction Company and 2 others

.....Petitioner(s)

Versus

Chief Engineer Public Works Department Takkar Road and Another

.....Respondent(s)

Counsel for Petitioner(s) : Yogendra Kumar Srivastava
Counsel for Respondent(s) : C.S.C.

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Supplementary Affidavit filed today is taken on record.

2. Heard Sri Yogendra Kumar Srivastava, learned counsel for the petitioner and Sri Rishabh Agarwal, learned State Law Officer for the State.

3. A joint statement has been made by the learned counsel for the parties that they do not propose to file any affidavit and the petition be decided on the basis of the documents available on record.

4. With the consent of the parties, the petition is being decided at the fresh stage.

5. The case of the petitioner as worded in the petition is that the petitioner happens to be a construction company, which had entered into a contract for execution of work with the Public Works Department.

6. Since disputes and differences arose, the matter was referred to arbitration, which was registered as Arbitration Case No. 2 of 2017 and vide award dated 05.09.2018, the Arbitrator allowed the claim of the claimant-petitioner, while awarding an amount of Rs.10,06,130/- along with interest. An application under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as A.C. Act 1996), came to be preferred by the respondent, which remained pending. The claimant-petitioner filed Execution Case No. 133 of 2018 before the Commercial Court, Aligarh, in which an order came to be passed on 14.05.2022 by the Commercial Court, Aligarh, whereby it was opined that the execution of the award was fully satisfied. Thereafter, on 09.02.2024, the Presiding Officer, Commercial

Court-I, Agra, in Arbitration Case No. 1671 of 2018 under Section 34 of the Arbitration and Conciliation Act, 1996, set aside the award dated 05.09.2018. Post setting aside of the award by the Commercial Court, Agra, an application came to be preferred by the respondents being Misc. Case No. 1 of 2025 before the Commercial Court, Agra, under Section 151 CPC, seeking the relief that since the award has been set aside, the amount which had already been recovered in terms of the execution be returned back. An objection came to be preferred by the petitioner / claimant, which came to be rejected and an order to the said extent was passed on 21.08.2026 directing the claimant / petitioner to deposit Rs. 13,87,290/-.

7. Questioning the order passed by the Commercial Court, Agra in Misc. Case No. 1 of 2025, *Chief Engineer, Public Works Department and others versus Satish Construction Company and others*, the petition has been filed.

8. This Court on 24.09.2026, proceeded to pass the following orders:-

"*Learned counsel for the petitioners submits that an award was passed in favour of the petitioners. Thereafter, execution case was filed, which was allowed directing to the respondent to deposit the awarded amount, along with interest. In the meantime, the application under section 34 of the Act was allowed and thereafter, the application under section 151 CPC was filed, which was allowed by the impugned order without considering the objection filed by the petitioners, by which the awarded amount was directed to be refunded, but the learned counsel for the petitioners has not brought on record the copy of the objection.*
He prays for and is granted a week's time to file supplementary affidavit bringing on record the objection, if any.
List again as fresh on 06.10.2026."

9. Learned counsel for the claimant-petitioner has submitted that the application under Section 151 of the CPC is not maintainable, particularly when the only proceeding, which can be initiated is under Section 144 of the CPC. Submission is that there is a marked difference between proceedings under Section 151 and Section 144 of the CPC. Argument is that Section 144 of CPC provides for restitution, whereas Section 151 of CPC is a provision, which can only be resorted to, when there is no other provision available in the statute for invocation of inherent powers of the Court. Submission is that Section 35 of the A.C. Act, 1996 talks about finality of the arbitral awards and with regard to enforcement, Section 36 throws light according to which, the decree is to be executed as if it is a decree of the Civil Court. Thus the

only recourse available to the respondent is Section 144 of the CPC. Thus, it is prayed that the order impugned be set aside and the petition be allowed *in toto*.

10. Countering the submissions so made by the counsel for the claimant-petitioner, Sri Rishabh Agarwal, learned State Law Officer has submitted that once the award came to be set aside under Section 34 of the Act, then the only remedy available to the claimant-petitioner is to prefer an appeal under Section 37 of the Act and merely because proceedings have been preferred / instituted under Section 151 and not Section 144 of the CPC would not be of much relevance and matter, once the award has attained finality and the power vests with the Court to direct for deposit of the amount.

11. I have heard the submissions so made across the Bar and perused the record.

12. The facts of the case are not in issue. It is not in dispute that an award came to be passed on 05.09.2018 by the Arbitrator. Proceedings under Section 34 of the Act came to be instituted by the respondents. However, before the decision in the proceedings under Section 34 of the Act, the Executing Court vide order dated 14.05.2022, the execution of the award was fully satisfied. Thereafter, on 09.02.2024, the proceedings under Section 34 of the Act came to be allowed in favour of the respondent setting aside the award dated 05.09.2018. Thereafter, an application under Section 151 CPC came to be preferred by the respondents before the Commercial Court, Agra, for deposit of the entire amount, which stood recovered pursuant to the orders passed in the execution case, to which an objection was filed by the claimant-petitioner and on 21.08.2026, the Commercial Court, Agra, directed the claimant-petitioner to deposit the amount, which was recovered pursuant to the orders passed in execution.

13. Now a question arises as to what is the recourse available to a party to deposit of the amount, which was awarded pursuant to an award and the award subsequently came to be set aside. Though, according to the claimant-petitioner, proceedings under Section 144 of the CPC are maintainable, however, on the contrary, the stand of the respondent is that proceedings under Section 151 of the CPC would lie.

14. This Court, at this juncture, raised a pointed query to the learned counsel

for the claimant-petitioner as to whether the order dated 09.02.2024 passed in the proceedings under Section 34 of the Act, setting aside the award dated 05.09.2018, has been challenged in appeal under Section 37 of the A.C. Act, 1996, the answer is in the negative.

15. Sri Yogendra Kumar Srivastava, learned counsel for the claimant-petitioner submitted that the claimant-petitioner would be filing an appeal under Section 37 of the 1996 Act. He submits as per instructions that liberty be accorded to the claimant-petitioner to file an appeal under Section 37 of the Act and since there is a delay, the delay be condoned.

16. To such a submission, Sri Rishabh Agarwal, learned State Law Officer submits that though there is an enormous delay, and if there is a delay, then obviously the claimant-petitioner can take recourse to the provisions contained under Section 14 of the Limitation Act, 1963 while relying upon the judgment in ***P. Sarathy vs. State Bank of India*** **(2000) 5 SCC 355**.

17. In view of the specific statements made by the respective parties, in particular of Sri Yogendra Kumar Srivastava who appears for the claimant-petitioner, this Court is not delving further into the matter while disposing of the petition without interfering in the order impugned in the petition, leaving it open for the claimant-petitioner to raise all legal and factual grounds while preferring an appeal as also grounds for condonation of delay.

18. In view of above, the petition is **disposed of**.

October 6, 2026
N.S.Rathour

(Vikas Budhwar,J.)

Digitally signed by :-
NIPENDRA SINGH RATHOUR
High Court of Judicature at Allahabad