



Order Below Exh.28 in Arb. Rd. No.13725/2025
(Harishchandra Bhikaji Santre Vs. Competent Authority..)

The decree holder has filed the present application for permission to withdraw the compensation amount deposited by Judgment debtor in ARD No.13725/2025 and prays that application be allowed.

02. The report of Assistant Superintendent was called and say of Judgment debtor was also called.

03. The Assistant Superintendent in his report stated that the amount of Rs.16,39,16,148/- (Rupees Sixteen Crore Thirty Nine Lack Sixteen Thousand One Hundred and Fourty Eight Only) is deposited in the Court on 22.04.2026.

04. Judgment debtor no.1 filed his say to the said application at Exh.32 and stated that in the said matter arbitration award under execution is challenged by NAI by filing Civil M.A. No.157/2026 before the Hon'ble Principal District Judge at Aurangabad and Hon'ble Principal District Judge, pleased to pass order below Exh.5 and 31 that if NAI has deposited 50% of enhanced amount with interest in the Court the execution petition shall be stayed. NAI has deposited amount in the executed court and execution proceeding is stayed now therefore, application of decree holder is not maintainable.

05. The Judgment debtor no. 2 NAI has filed his say to the said application at Exh.33 and in its reply stated that on 24.09.2025 Judgment debtor has filed objection as regard to the calculation submitted by the decree holder. A decree holder had claimed compensation amount in the petition beyond decretal amount. There is

a huge deference in calculation submitted by the decree holder and decretal amount. The objection filed by the Judgment debtor is not yet decided. The Judgment debtor further sated that the present execution proceeding is stayed by Hon'ble Principal District Judge, Aurangabad therefore present application cannot be entertained.

06. Judgment debtor no.2 further in reply stated that as per order of Hon'ble Supreme Court of India passed in National Highway Authority of India Vs. Maharaj and Ors. Arising in SLP (c) no.27295/2024 decided on 20.02.2025 wherein the withdrawal of amount of compensation shall subject to bank guarantee. A decree holder be directed to furnish bank guarantee in the like amount of the compensation subject to deciding of objection as regard the correct calculation. He further stated that no liberty granted by Hon'ble Principal District Judge, Aurangabad to withdraw the compensation amount and as present proceeding is stayed by Hon'ble Principal District Judge, Aurangabad then permission cannot be granted to withdraw the amount.

07. Heard learned advocate for decree holder and Judgment debtor at length.

08. Learned advocate for the decree holder placed his reliance on the judgment of Hon'ble Bombay High Court Bench at Aurangabad in Padmakar Haribhau Muley Vs. Competent Authority Land Acquisition. (Writ petition no.11475/2025) and stated that in this Judgment Hon'ble High Court permitted to withdraw the amount though execution proceeding is stayed. He also placed his reliance on the Judgment of Hon'ble Supreme Court of India in National Highway Authority of India Vs. Pradipsing and Ors. in S.L.P. No.17708/2024 and stated that in this Judgment Hon'ble Supreme Court directed that petition under section 34 of the Act 1996 as are pending shall permit withdrawal of 50% of amount deposited by appellant subject to respondent furnishing

adequate security for the said amount to the satisfaction of the said Court.

09. The learned counsel for the NHAI in reply arguments stated that if decree holder given the bank guarantee then he has no objection to withdraw the amount subject to correct calculation of the amount. Even he orally submitted that the amount of decree holder either today or another day has to pay to the decree holder. He himself admitted that though there is a stay to the said proceeding by Hon'ble District Court but there is no specific stay for withdrawal of amount and he has no objection for withdrawal of amount if decree holder furnishing bank guarantee.

10. Here, first I would like to mentioned that Civil M.A. No. no.157/2021 was dismissed by Hon'ble Principal District Judge, Aurangabad and stay vacated and granted liberty to the respondent no.1 (decree holder in the present execution proceeding) to approach the executory Court for withdrawal of the amount. Thereafter, Judgment debtor no.2 in the present darkhast petition again approached to the Hon'ble Principal District Court and filed a application for the stay of proceeding and as per his application Hon'ble Principal District Court, Aurangabad continued the interim stay for four weeks to approach before the Hon'ble High Court.

11. In the present darkhast said withdrawal application is pending from 02.05.2026. I have also gone through the above Judgments cited by the learned advocate for the decree holder. The situation in Pradip Haribhau Muley Vs. Competent Authority in writ petition no.11475/2025 and case in hand is identical one. I have also gone through the online order passed in ARD No.3373/2025 in which Civil Judge Senior Division, Aurangabad permitted to withdraw the amount though matter was stayed by Hon'ble High Court and Hon'ble High Court in writ petition No.11475/2025 as mentioned above only

modified the order of Civil Judge Senior Division, Aurangabad and not stated anything about whether stay was continued or vacated. Similarly, above cited Special Leave Petition no.17708/2024 Hon'ble Supreme Court held that, "the Court in which writ petition under section 34 of the 1996 Act are pending shall permit withdrawal of 50% of amount deposited by appellant subject to respondent furnished adequate security for the said amount to the satisfaction of other court". In the said Judgment para no.2 Hon'ble Supreme Court stated that said Special Leave Petition filed, "by the impugned order, the interim relief of stay of award directing payment of compensation has been granted pending petition under section 34 of the Arbitration and Conciliation Act, 1996". From it is also clear that Hon'ble Supreme Court permitted to withdraw the amount even during the stay of the award.

12. Now, again turned to the order passed by Hon'ble Principal District Judge. The Hon'ble Principal District Judge merely stay further execution proceeding. The said order does not direct that the amount already deposited before this Court shall not be disbursed. Per contra, Hon'ble Principal District Court in his Judgment/order directed decree holder to approach executing Court to withdraw the amount. Therefore, in my considered view a distinction has to be maintained between coercive execution against the Judgment debtor and disbursement of the amount already secured by deposit before the Court.

13. It is significant that the liberty so granted has not been expressly recalled, cancelled or made subject to any condition that the decree holder shall not seek withdrawal of amount during the period for which the execution petition has been stayed. Therefore, in my considered view execution petition remained stayed for four weeks has to be read harmoniously with earlier liberty granted in the Judgment by Hon'ble Principal District Judge. The stay can not ordinarily be construed as an implied recall of specific liberty granted by the same

Court unless it is specifically mentioned. No such specific prohibition is found in the order placed before this Court.

14. Here, I would like to state that distinction is that decree holder is seeking consideration of the liberty expressly granted by Hon'ble Principal District Judge in respect of amount already deposited pursuant to this order and this Court is not directing any fresh deposit, attachment, sale or coercive recovery or any other process against Judgment debtor. Therefore, the objection of Judgment debtor that execution petition is stayed automatically nullify the specific liberty granted by Hon'ble Principal District Judge to decree holder to file application to withdraw the amount before executing Court. In these circumstances, this Court is of considered view that permitting withdrawal of amount already deposited would not amount to disregarding or modifying the stay granted by Hon'ble Principal District Judge. The object of section 36 of the Arbitration and Conciliation Act is to balance the equities between the parties. The award holder cannot ordinarily be deprived of the fruits of the award.

15. Similarly, **Hon'ble Bombay High Court in Vijay Vasantrao Gohil Vs. IRB Infrastructure Developers Ltd., First Appeal No.1369 of 2019 dated 06.04.2021**, in para 31 held that, "in the opinion of this Court permitting withdrawal of the amount would also not amount to modifying the stay order as by virtue of this order the respondent has not been asked to pay any additional sum nor are the terms of stay order granted by Court in any manner being modified. All that is being done is that in view of a long settled practices, the applicant is being permitted to withdraw the amount deposited by the respondent in compliance with stay order subject to applicant furnishing security as directed by the Court and by adopting this course of action, the respondent Judgment debtor is not in any manner prejudiced in as much as against withdrawal of the amount the applicant would be

required to furnish such security as Court deems fit. The only consequence is that instead of money lying in the deposit with bank, the decree holder gets to enjoy the same, subject of course to furnishing security for withdrawal of the amount.” The ratio laid down by Hon’ble Bombay High Court applicable to case in hand and as stated in forgoing paras, permitting withdrawal of amount already deposited would not amount to disregarding or modifying the stay granted by Hon’ble District Court.

16. In the present darkhast the learned advocate for the Judgment debtor No.2 orally given no objection to withdraw the decretal amount subject to correct calculation. In this regard I perused the record of the ARD. The present ARD is filed for the recovery of Rs.28,63,46,063/- (Rupees Twenty Eight Crore Sixty Three Lack Fourty Six Thousand and Sixty Three Only) and accordingly given a calculation in Exh.1. Whereas Judgment debtor No.2 filed a pursis on 01.02.2025 and along with pursis filed a calculation. In pursis Judgment debtor No.2 stated that it undertake to deposit decretal amount of compensation in present execution proceeding subject to correct calculation within four weeks and along with said pursis the calculation is filed on record and as per said calculation it is shown as a total compensation amount of Rs.11,39,15,042/- (Rupees Eleven Crore Thirty Nine Lack Fifteen Thousand and Fourty Two Only). From the pursis of the Judgment debtor no.2 it can be said that though it submit the calculation along with the pursis but Judgment debtor no.2 is not sure whether calculation is correct or not. In pursis Judgment debtor no.2 itself stated that it going to submit correct calculation within four week and said pursis is filed on 01.12.2025 but till date no corrected calculation is filed on record. From the report of Assistant Superintendent amount of Rs.16,39,16,148/- (Rupees Sixteen Crore Thirty Nine Lack Sixteen Thousand One Hundred and Fourty Eight Only) is deposited in the Court. The decree holder filed undertaking in

the court that if access amount of paid to him he will refund the said amount along with the interest to the Judgment debtor no.2.

17. As stated in forgoing paras, Judgment debtor no.2 has no objection to withdraw the amount subject to correct calculation. Similarly, Hon'ble Principal District Judge in order and Judgment granted liberty to file application before executing Court to file withdrawal application and as there is no specific stay for withdrawal of amount then only question remains about the calculation and which is correct amount of compensation either mentioned by decree holder in ARD or which is stated by Judgment debtor No.2 along with pursis. In the present petition Judgment debtor deposited 50% amount in the Court as per order of Hon'ble District Court i.e. Rs.16,39,16,148/- (Rupees Sixteen Crore Thirty Nine Lack Sixteen Thousand One Hundred and Fourty Eight Only) and given orally no objection to withdraw the said amount subject to bank guarantee but in my considered view unless and until correct calculation is not file on record it will not proper to grant permission to withdraw entire amount of Rs.16,39,16,148/- (Rupees Sixteen Crore Thirty Nine Lack Sixteen Thousand One Hundred and Fourty Eight Only) on bank guarantee rather it necessary to give opportunity to Judgment debtor No.2 submit correct calculation in the Court within two weeks from today and on this background here again I would like to state that though Judgment debtor given no objection for withdrawal entire amount on bank guarantee but as discussed above in my considered view if only permission for withdrawal 50% amount on personal undertaking with affidavit granted to decree holder and remaining 50% amount lies in the Court then interest of Judgment debtor is also secured as decree holder not get the entire amount of Rs.16,39,16,148/- (Rupees Sixteen Crore Thirty Nine Lack Sixteen Thousand One Hundred and Fourty Eight Only) deposited by Judgment debtor therefore in the interest of justice decree holder is permitted to withdraw 50% amount out of Rs.16,39,16,148/- (Rupees Sixteen Crore

Thirty Nine Lack Sixteen Thousand One Hundred and Fourty Eight Only) deposited by Judgment debtor on furnishing personal undertaking with affidavit that he would redeposit amount in case award is modified or set aside within two weeks from the date of such order. Hence, for the reason recorded above, I pass following order.

ORDER

1. The application is partly allowed.
2. Decree holder is allowed to withdraw Rs.8,19,58,074/- (Rupees Eight Crore Nineteen Lack Fifty Eight Thousand and Seventy Four Only) subject to file undertaking alongwith affidavit that in the event the decree is subsequently modified, reversed then he will redeposit withdrawal amount alongwith interest in accordance with final order passed by Hon'ble Appellate Court within two weeks from the date of such order.
3. The Assistant Superintendent shall refund the amount of Rs.8,19,58,074/- (Rupees Eight Crore Nineteen Lack Fifty Eight Thousand and Seventy Four Only) only after verifying undertaking and affidavit referred above have been duly furnished and accepted.

Date :-07.08.2026.

(V.J. Kore)
4th Jt. Civil Judge Senior Division,
Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment/order are same, word to word, as per the original Judgment.

Name of the Stenographer	:- Y.B. Mirdhe
Court	:- 4 th Jt. CJSD, Aurangabad
Date	:- 07.08.2026
Judgment/order signed by the	
Presiding Officer on	:- 07.08.2026
Judgment/order uploaded on	:- 07.08.2026