

**ORDER BELOW EXH. 28 IN DARKHAST NO. 1155/2019**  
**Aba Parekar & others Vs. Land Acquisition Officer No. 17 & others**  
**CNR NO. MHPU010026922019**

The Judgment debtor National Highways Authority of India has filed present application and submitted that the Judgment Debtor cannot be required to deposit the excess compensation determined by the arbitrator, as the challenge to the arbitral award is still pending and hence, prayed to dismiss the said execution proceeding.

2] It is contended that the decree holder has filed the captioned darkhast before this Court for execution of the arbitral award passed by the Ld. Sole Arbitrator. The decree holder has already challenged the arbitral award passed in the proceedings of M.A. No. 953/2019 under Section 34 of the Arbitration and Conciliation Act, 1996 and the same is pending for consideration of the Hon'ble Principal District Judge. The Court vide order below Exh. 11 dtd. 10<sup>th</sup> April, 2023 passed an order for attachment of the movable properties of the Judgment Debtor Nos. 1 to 3. It is further contended that the National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019 more particularly Rule 3 thereof provide the manner of making the necessary funds available to the competent authority. In the present circumstances, it is pertinent to note that both the Decree Holder and the Judgment Debtor have challenged the arbitral award passed by the Ld. Arbitrator and the said challenge is sub-judice before the Principal Civil Judge. Moreover, the amount of compensation

determined by the competent authority has already been deposited by the Judgment Debtor. In such circumstances, the Judgment Debtor cannot be required to deposit excess compensation determined by the arbitrator as the challenge to the arbitral award is still pending. J.D. prayed to allow the application.

3] The say of the other side was called. The decree holder has filed say vide exh.30. The decree holder has strongly opposed the application. It is contended that the application is mischievous, malafide and not maintainable. The application is misconceived as it is based on incorrect and incomplete averments of facts and hence, it deserves to be rejected. He relied on the authority of the Hon'ble Apex Court i.e. **"Leela Hotels Vs Housing and Urban Development Corporation Limited"**. It was held that the Award of an Arbitrator is a Decree and the language used in Section 36 of the Arbitration Act makes it clear that such an Award has to be enforced under the Code of Civil Procedure in the same manner as it would be a Decree of the Court.

4] It is further contended that the arbitral award challenged under section 34 does not fit into any of the parameters required under sub section 2a or 2b or of section 34 of the Arbitration and Conciliation Act, 1996. The arbitral award is as per the Public Policy of India and does not conflict with it. The Arbitral award is not induced or affected by any fraud or corruption or is in violation of section 75 or section 81. The applicant provides for non-deposit of compensation in case the Arbitrator Award is challenged by either of the parties to the Arbitration Award. This contention of the applicant

is completely misplaced as the provisions of the Rules of 2019 have been completely misread by the applicants. He prayed to reject the application as it is false and bogus.

5] Perused the application and say. Heard both the sides. It reveals from the record that the lands of the Decree Holders were acquired by National Highways. Aggrieved by the compensation awarded, the Decree Holder had preferred applications under section 3G(5) of the National Highway Act seeking enhancement of compensation. The Arbitrator was pleased to enhance the compensation by way of Judgment and Award dated 29/10/2019. The execution proceeding was preferred by the Decree Holders in the year 2019 before the District Court, Pune. The application was heard by the District Judge-20 and Addl. Sessions Judge, Pune and it was transferred on 17/02/2020 to this Court. The Judgment Debtors in 2024 have preferred the said application as per Rule 3 of the National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019.

6] It reveals that the Rules 2019 do not apply to the deposit of compensation in the Court or the Provisions of Civil Procedure Code which require the amount to be deposited in case of a money decree. The Provisions of delegated legislation would in no way override the statutory provisions of Civil Procedure Code in case of a money decree. The Rules will not override statutory provisions under a law. It further reveals that these Rules are only applicable for making the requisite funds available to the competent authority.

These Rules do not deal with or provide a prohibition for depositing the compensation in the Court. These Rules do not provide any Bar on the Court from calling for deposit of compensation. It reveals that these Rules have no role to play in the cases where the Arbitration Award is in execution before the Court. Once the matter has been settled by the Arbitrator and Award has been passed, it becomes a decree to be enforced by the executing court and it follows the Code of Civil Procedure.

7] It further reveals that the Provisions of National Highway shall not govern the proceedings for execution of the Arbitration Award. It appears that the ratio in the authority cited (supra) by the Decree Holder is applicable to the present case in hand. It reveals that the application filed by the J.D. is devoid of merit. Considering the above discussion, I pass the following order.

Order

The application is hereby rejected.

Date : 26/09/2024

(H. J. Shende)  
3<sup>rd</sup> Addl. Judge and CJSD,  
Small Cause Court, Pune.