



ARBITRATION CASE NO.327/2021.
(CNR Number:MHLA010021592021)

ORDER BELOW EXH.5.

(National Highways Authority of India V/s.
Jainbi Mustafa Saudagar & other 1)

- 1] The applicant herein has filed this proceeding under section 34 of the Arbitration and Conciliation Act, 1996 (Hereinafter referred to as "the Arbitration Act" for the sake of convenience), challenging the Award No.2019/Arbitrator/NHAI/ Shirur Tajband/CR-440 dated 10.07.2020 passed by the Arbitrator at Latur.
- 2] By way of this application, the applicant has prayed for stay of execution of the award dated 10.07.2020.
- 3] The Respondent No.1 has filed say vide Exh.19 to this application(Exh.5).
- 4] The Respondent No.2 by filing pursis vide Exh.21 has submitted that the contents of award passed by the Competent Authority of Land Acquisition (in short "C.A.L.A.") be considered as say to the main petition and interim application.
- 5] Heard learned Adv.Smita M. Zarkar for applicant and Ld. Adv. Shri I.A. Dange for respondent No.1, and Ld.D.G.P. Shri S.V.Deshpande, for respondent No.2.
- 6] Also perused written arguments filed by the applicant

at Exh.22. As well, perused the written argument Exh.23 filed by the Respondent No.1.

7] It is submitted by the applicant-National Highways Authority of India (In short "NHAI") that :-

(a) There are many law points involved in this case. It may take considerable time to decide the main proceeding on merit. Till that time, if the award is executed the applicant/NHAI may suffer great financial loss.

(b) As the compensation determined by the Competent Authority for Land Acquisition is deposited and withdrawn by the respondent No.1, no loss is going to be caused to the respondent No.1.

(c) However, meantime the respondent no.1 has moved the Executing Court by filing execution petition and the Executing Court has directed the applicant to deposit the amount which is in lakhs. Hence, it is necessary to stay the said execution proceeding.

8] As against this, it is submitted by the respondent no.1 that :-

(a) The order passed by the Arbitrator is correct one, and therefore, the NHAI is under duty to deposit the amount as per the order of the Arbitrator.

(b) Hence, application be rejected.

9] The Respondent No.2 submitted to pass necessary order.

10] In view of these submissions, I perused the documents filed by both the parties. It appears that the award passed by the Ld.Arbitrator is under challenge. Execution proceeding No.1481/2022 is filed by the Respondent No.1 against the NHAI is pending in the Court of the 2nd Jt. Civil Judge, S.D.Latur. If, the NHAI would be ordered by the said Court to deposit the amount in the Court, definitely the Respondent No.1 may withdraw the same and in that case, the proceeding filed under section 34 of the Arbitration Act, would become infructuous. Hence, it has become necessary to stay the execution of award.

11] As per Section 36 of the Arbitration Act, filing of proceeding under section 34 of the Arbitration Act, is not automatic stay of enforcement of award. The Court has discretion to grant stay, which may be subject to such conditions as it may deems fit.

12] It is submitted that in this matter Darkhast bearing No.1481/2022 is pending before the Court of the 2nd Jt.Civil Judge, S.D. Latur, for an amount of Rs.52,53,201/-.

13] Considering this, if half of the awarded amount is directed to be deposited by the applicant / NHAI, that would suffice the purpose.

14] In view of these observations, the following order is passed.

ORDER

(i) Execution and operation of an Award dated 10.07.2020 passed by the learned Arbitrator in Case No.2019/Arbitrator/NHAI/Shirur Tajband/C.R.-440, is hereby stayed subject to following conditions :-

(a) The applicant / National Highways Authority of India, Project Implementation Unit-Nanded to deposit half of the awarded amount in the Executing Court till 15.06.2023.

(b) As the amount of compensation determined by the Competent Authority for Land Acquisition is already deposited and withdrawn by the respondent no.1, the aforesaid amount (mentioned in Clause-(a)) shall remain in the custody of the Executing Court till final disposal of the present proceeding on merits.

(c) The Executing Court shall take immediate steps to invest the deposited amount (as per directions given in Clause-(a)) herein-above in any Nationalized Bank in fixed deposit scheme till final disposal of the present proceeding.

(d) The present proceeding is expedited.

(e) Both the parties shall extend their co-operation to this Court to decide the present proceeding on merits, as early as possible.

Sd/-

Latur.
Date:29.04.2023.

(Smt.S.S.Kosamkar)
Principal District Judge, Latur.