

MHPU010211432023



ORDER BELOW EXH.16 IN
CIVIL M.A. NO.1183/2023

The application is for grant of stay under Section 36 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act). By the impugned award, the learned sole arbitrator (Justice Shalini Phansalkar-Joshi) (Retired) held that, non-applicant is entitled for 6 claims and 1 additional claim. The additional claim is for worth Rs. 28,58,360/-(Twenty Eight Lacs Fifty Eight Thousand Three Hundred and Sixty). The additional claim was only granted as that only being within the prescribed limitation.

2] The applicant has come with the case that this additional claim was not only beyond the reference of dispute but also it is based on no evidence. Hence, in short the applicant has come with the case that the said award should be stayed as it is against the policy being patently illegal as there was no evidence so also beyond the jurisdiction. That apart many other grounds are taken in the application.

3] The respondent by it's reply (Exh.11) has opposed the application. In short, it is contended that the award being in the nature of a money decree it cannot be stayed or if it is stayed the

stay shall be subject to deposit of 100 % of the award amount including the accrued interest.

4] I have heard Mr. Londhe, the learned counsel for the applicant and Mr. R. B. Jagtap, the learned counsel for the respondent, in support of the respective pleadings and submissions/contentions. On the basis of the above, the following points for determination arise, to which I have given findings for the reasons thereto.

Sr. No.	Points	Findings
1]	Whether the applicant has made out a case for grant of stay. If yes, whether it can be granted unconditionally ?	Yes for conditional stay.
2]	What Order?	... As per final order.

REASONS

AS TO POINT NO-1 :-

5] Before appreciating the rival submissions and contentions of the parties, let me appreciate the law pertaining to stay to an arbitral award, which is in the nature of a money decree. The parties have relied on the following judgments.

1] **Alkem Laboratories Limited Vs. Issar Pharmaceuticals Private Limited, reported in 2024 DGLS (Bom.) 1261.**

- 2] CFM Asset Reconstruction Pvt. Ltd. and Ors. Vs. SAR Parivahan Pvt. Ltd. and Ors., reported in MANU/MH/3510/2024.
- 3] Manish Vs. Godawari Marathawada Irrigation Development Corporation, reported in 2018 SCC OnLine SC 3863.
- 4] Power Mech Projects Ltd. Vs. Sepco Electric Power Construction Corporation, reported in 2020 SCC OnLine Del 2049: (2020) 211 AIC 671.
- 5] M/s. Balmer Lawrie & Co. Ltd. Vs. M/s. Shilpi Engineering Pvt. Ltd. reported in Interim Application (L) No. 779 of 2024.
- 6] As per judgment in the matter of **Alkem Laboratories Limited (Supra)**, a court has power to stay any money decree arbitral award, even, if it does not come under the second proviso of Section 34. Provided it is the discretion to be exercised judicially. Further, it was also laid down if such award is based on no evidence then the court may stay unconditionally. In the matter of **CFM Asset Reconstruction Pvt. Ltd. and Ors. (Supra)**, the award was stayed when it was based on an unproved valuation report. In the judgment in the matter of **M/s. Balmer Lawrie & Co. Ltd. (Supra)**, after appreciating many earlier judgments of the Hon'ble Supreme Court it was laid down by the Hon'ble Bombay High

Court that it is the consistent approach of the Hon'ble Supreme Court not to stay any money decree arbitral award, unless there is deposit of 100 % award amount. Thus, in case of arbitral award more stringent conditions are there to stay, such award as compare to any other civil suit money decree. For better appreciation and ready reference paragraph no.14 of the said judgment is extracted as below.

14. The decisions which have been relied upon by the Counsel for both the sides and which have been adverted to, makes clear that the Supreme Court has taken a consistent stand that where the Award is in the nature of money decree, there is a requirement for deposit of 100 % of the awarded amount for grant of stay. I do not find any distinction in applications for stay under Section 36(3) and under Section 37 for different parameters to be applied in exercise of discretion by the Court in imposing conditions for grant stay. There is nothing in both the provisions for taking such a view. Further, a liberal view is not contemplated under Section 36(3) of the Arbitration Act whilst imposing the conditions for stay of the award.

7] In view of the above, I find that any money decree

arbitral award can be stayed even un-conditionally but such stay should be on alike consideration as the award is patently illegal or perverse.

8] Here in the present matter, the case of the applicant is not of fraud as contemplated by Section 36 proviso 2. Thus, only controversy is whether the award is without there being any evidence ?

9] The parties are not at issue that the Plendge consultant was the supervising authority to have measurement and verify the quality of the construction, so also to certify the payment. As such it was a neutral person. The learned arbitrator has relied on the certificate issued by the Plendge consultant on 13/10/2014 reporting or certifying the details of the scaffolding engaged for the forth slab on held since 02/10/2014. As per the impugned award there is no finding that thereafter the material was removed by the non-applicant. It is also not the case of the applicant at least by way of specific pleadings. So at least at this interim stage some material in the nature of steel and scaffolding cannot be disputed. Thus, the finding in the award about the same, at this stage cannot be disputed.

10] However, Mr. Londhe is right in his contention that

there was no proof about the valuation. The non-applicant itself came with three different calculations. Even, he has pointed out some discrepancies in the notices and the police complaint about the value of the material. The learned arbitrator accepted the lowest valuation. The learned arbitrator recorded the findings about the same in paragraph no.102 of the award, which are reproduced below.

102. The fact remains that, it is proved on record that the material was lying at the site, it was belonging to the Claimant, it was for the purpose of executing the contract work and now it is not there. As the project site is now possession of the Respondents, they are accountable for the same. It is not their case that they have returned the material to Claimant at any point of time. Hence, the Claimant becomes entitled to get its value. Taking into consideration inconsistencies in the value as stated by Claimant, the Claimant is held entitled to the lowest amount of value as stated in the particulars of claim of Rs. 28,58,360/-.

11] Prima facie, I find that Mr. Londhe his right in his contention that had the claimant put any other lowest valuation, the arbitrator would have accepted without their being any proof.

I find, this issue requires consideration. But, as rightly contended by Mr. Jagtap when there is evidence about material the approach of the arbitrator to accept the lowest one cannot be faulted at least at this stage. Thus, I find that when there is evidence about the material and when there is no explanation by the applicant or any contra calculation then the valuation accepted by the learned arbitrator cannot be faulted at least at this stage. One more reason is there. The non-applicant adduced some evidence in the nature of a police complaint, the notices and the certificate by the Plendge consultants to shift onus of proof on the applicant. The applicant failed to discharge to the said onus. Thus, I find that the award should be stayed but subject to deposit of 100 % the award amount including the accrued interest till today. Thus, point no.1 is answered accordingly.

12] In view of above discussion, I proceed to pass the following order.

ORDER

1] The application (Exh.16) is allowed in terms of the alternative prayer by directing the applicant to deposit an amount of Rs. 28,58,360/-(Twenty Eight Lacs Fifty Eight Thousand Three Hundred and Sixty) along with the accrued interest till today @ 12 % per annum as per the impugned award within 60 days from today.

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M/s. Eisha Goyal Agarwal Developers etc Vs.
M/s. Rachana Constructions

2] On failure the stay granted shall become vacated
automatically without further reference to the Court.

Date : 19/03/2025 (A. L. Tikle)
District Judge-2, Pune.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file judgment are same word for word as per original Judgment.

Name of steno	:	S. S. Gupte, (Stenographer Grade-III)
Name of the Court	:	Shri. A. L. Tikle, District Judge-2, Pune
Date of Order	:	19.03.2025
Order signed by P.O. on	:	03.04.2025
Order uploaded on	:	03.04.2025