

COMMON ORDER BELOW EXH. 21 & 22 IN ARBITRATION
REGULAR DARKHAST NO. 1445 OF 2024.

- 1) The Decree-Holder moved the application (at Exh. 21) for praying to re-issuance of recovery warrants of Rs. 47,74,084/- against the Judgment-Debtors.
- 2) Judgment-Debtor No. 2 objected the application by filing reply-cum-objection (at Exh. 22) under Section 47 of the Code of Civil Procedure. Judgment-Debtor No. 2 contended that the entire decretal amount already paid to the Decree-Holders. Therefore, the Decree-holder is not entitled to claim of solatium & interest in closed case.
- 3) Judgment-Debtor No. 2 also raised objection under Section 47 of the Code of Civil Procedure by contending that the Decree-holder was already received entire benefits of the Award. The claim raised by them in this petition is exceeds amount under the arbitration award. Therefore, the executing court or this Court cannot go beyond the said award. If the executing court pass any order in this matter, it amounts to modification of the arbitral award by this court, which is not permissible by law. In fact, this Court has no jurisdiction to amend or modification of arbitral award in this petition. On these grounds, he urged for dismissal of this petition as fully compiled or satisfied.
- 4) Judgment-Debtor No. 2 further contended that he filed the application under Section 34 of the Arbitration and Conciliation Act. Rule 3(b) of the National Highways (Manner of Depositing the Amount by the Central Government, Making Requisite Funds to the Competent Authority for Acquisition of Land) Rules, 2019 provides that, the payment of enhanced compensation and interest is subject to the decision of the application under Section 34 of the Arbitration and Conciliation Act. Unless and until the said application is decided

by the Competent Court, the enhanced compensation and interest cannot be paid to the Decree-holder. In support of the same, he relied upon the decision of **Ram Awadh Vs. Competent Authority, 2019 (4) ALJ 31** & **Anil Tiwari Vs. Union of India**, Writ Petition No. 3992/2018 of the Hon'ble Madhya Pradesh High Court.

5) Judgment-Debtor No. 2 further contended that Judgment-Debtor No. 1 filed Diary Application No.24435 of 2021 before the Hon'ble Supreme Court for praying to disallow retrospective effect/ operation of the decision of **Union of India V/s. Tarsem Singh & Others, 2019 SCC Online 1230**. In Writ Petition No. 8673 of 2022 (titled as *Shyam Mohanlal Agrawal V/s Union of India & Others*) before the Hon'ble Bombay High Court, his learned Advocate made submission of pendency of Diary Application No. 24435 of 2021 in respect of ***Union of India V/s. Tarsem Singh & Others (Supra)*** for seeking clarification of prospective effect/ operation of thereof. Upon his submission, the Hon'ble Bombay High Court adjourned hearing of Writ Petition No. 8673 of 2022 (titled as *Shyam Mohanlal Agrawal V/s Union of India & Others*) till decision of Diary Application No. 24435 of 2021 by the Hon'ble Supreme Court. The issue involved in the case in hand & the issue referred in Writ Petition No.8673 of 2022 (titled as *Shyam Mohanlal Agrawal V/s Union of India & Others*) is identical i.e., claim of solatium & interest on the basis of decision delivered by the Hon'ble Supreme Court in case of ***Union of India V/s. Tarsem Singh & Others (Supra)***. Therefore, Judgment-Debtor No. 2 requested to keep in abeyance this petition till the decision of Diary Application No. 24435 of 2021 (which pending on the file the Hon'ble Supreme Court). On these grounds, he urged for rejection of the application (at Exh. 21).

6) The Decree-holder filed his reply-cum-say (at Exh. 23) to

the objections raised by Judgment-Debtor No. 2. The Decree-holder contended that the Judgment-Debtors had not deposited entire decretal amount. The applications moved by the rival parties under Section 34 of the Arbitration & Conciliation Act have been rejected by the Hon'ble District Court, Jalgaon. Being aggrieved and dissatisfied of rejection of the said application, the Judgment-Debtors filed Arbitration Appeal No. 26/2022 before the Hon'ble High Court. The said appeal came to be allowed by the Hon'ble High Court and thereby the matter remanded back to the Arbitral Tribunal to work out calculations of the statutory benefits under the Land Acquisition Act. Accordingly, the concerned Arbitral Tribunal worked out calculations of the statutory benefits and passed order/award (at Exh. 14) dated 15/05/2024 to that effect. So the arbitral award in execution (at Exh.14) attained finality, wherein the right flowing from the judgment of the Hon'ble Supreme Court in **Union of India V/s. Tarsem Singh & Others (Supra)** are crystallized. According, the Decree-holder has claimed such statutory benefits. They further submitted that granting such statutory benefits does not result in modification of award because the arbitral award has specifically granted statutory benefits to the Decree-holder and which is based upon the decision or the judgment of the Hon'ble Supreme Court.

7) The Decree-holder contended that Judgment Debtor No.2 cited cases of **a) Sureshchandra Agrawal v Secretary to Government of India**, **b) Rishabhkumar Jejani v Secretary to Govt. of India**, **c) Project Director v Varghese Mathai**, and **d) Shyam Agrawal v Union of India**. In these cases, the Court declined to grant benefit of **Tarsem Singh's** judgment because it was not granted in the arbitral award and granting it now would result in modification of award. But facts of the present case are distinguishable. In the present case, the

Decree-holder had claimed the benefits of Section 23(1-A), 23(2) and 28 in the original arbitration petition. Even the Arbitral Tribunal passed an order on the issue. Therefore, granting of such benefits would not result in modification of award and would not fall under the ratio of judgments cited by Judgment Debtor No.2.

8) The Decree-holder contended that Judgment Debtor No.2 cited the case of Union of India v Tehal Singh (along with order dated 30/07/2021 passed therein) which filed separately for clarification of the issue relating to section 23(1-A) only for that specific case. It must be noted that no other connected case in Union of India v Tarsem Singh (supra) was listed. On these grounds, the Decree-holder urged for rejection of this objection raised by Judgment-Debtor No.2.

9) The learned Advocate for Decree-holder orally submitted that whatever objection raised by Judgment Debtor No. 2 in this reply is already decided by this Court while deciding applications at Exh. 12 & 13 and thereby this Court rejected these objections by passing reasoned order thereon. Therefore, such objections are liable to be rejected by applying principle of res-judicata. Ultimately, he urged for issuance of recovery warrant against Judgment Debtor No.2.

10) Heard the learned Advocates for both side. Perused the record & documents available therein.

11) At the very outset, I am going to deal with the objection raised by the learned Advocate for Judgment-Debtor No. 2 for seeking stay to execution of this award till decision of the application filed under Section 34 of the Arbitration and Conciliation Act & till the decision of Diary Application No. 24435 of 2021 by the Hon'ble Supreme Court. In this regard, I am going to deal with the

authorities submitted by Judgment-Debtor No. 2. In the case of Ram Awadh Vs. Competent Authority, 2019 (4) ALJ 31, the Hon'ble Allahabad High Court held that “16. *The above Section 3 (b) creates a rider on payment of enhanced compensation and interest subject to decision of application under Section 34 of the 1996 Act, therefore, unless and until the proceedings of Section 34 of 1996 Act is decided by the competent Court, the enhanced amount of compensation and interest cannot be paid to the petitioner.*” I have minutely gone through the said decision and seems it is not applicable to the present case for the simple reason that the Rules are framed under Section 9 of the National Highways Act, 1956 and the Statute clearly states that the Rules are to be formulated regarding deposit of compensation amount and **does not provide for any automatic stay of disbursement**. In the aforesaid judgment, unamended Section 36 of the Arbitration and Conciliation Act has been quoted without adhering to the bar created in view of proviso to Section 36 (3) of the Arbitration and Conciliation Act. Therefore, I have reproduced Section 36 of the Arbitration and Conciliation Act as under,

“36. Enforcement--(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a Prima facie case is made out that,--

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.--For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).”

On reading of the aforesaid provision it seems filing of the application under Section 34 of the Arbitration and Conciliation Act for setting aside arbitral award, shall not by itself render that award unenforceable. Mere filing of such application, does not provide for any automatic stay of disbursement of decretal amount. For that purpose, the Judgment-Debtors to obtain order of stay of the operation of the said arbitral award in accordance with Section 36 (3) of the Arbitration and Conciliation Act. In this case, the Judgment-Debtors admittedly have not brought any stay order to the

operation of the arbitral award (at Exh. 14) from the Competent Court.

12) At this juncture, I must say that Section 3G(6) of the National Highways Act clearly states that subject to the provisions of this Act, provisions of the Arbitration and Conciliation Act shall apply to every arbitration under this Act. Once the matter has been decided by the Arbitrator and the award has been passed, it becomes a decree to be enforced by the executing Court after following procedure as mentioned under Code of Civil Procedure. The provisions of the National Highways Act shall not govern the proceedings once the award has been passed. Rule itself makes it clear that the same is internal arrangement of the Central Government/Highway Authority and the competent authority only for making the funds available to the land owners. Since in *Ram Awadh's case (supra)*, unamended Section 36 of the Arbitration and Conciliation Act has been relied, therefore, the same is distinguishable on the facts of present case.

13) In the case of Anil Tiwari Vs. Union of India, Writ Petition No. 3992/2018, which relied by Judgment-Debtor No. 2, the Hon'ble Madhya Pradesh High Court disposed off this petition with granting liberty to the petitioner to file execution petition before the Competent Court. In this case, the Decree-holders filed this execution petition for recovery of arbitral amount. Ultimately, the said decision is not applicable as it is distinguishable on the facts of present case.

14) So far as, pendency of Diary Application No. 24435 of 2021, the learned Advocate for Decree-holder submitted that the said Diary Application is disposed of by the Hon'ble Supreme Court on 04/02/2025. This fact fairly admitted by the learned Advocate for Judgment-Debtor No. 2. In one of the matter the Decree-holder produced copy of Order and Judgment passed by the Hon'ble

Supreme Court in the Diary Application No. 24435 of 2021 & pointed out the said clarification application is disposed of by the Hon'ble Supreme Court. Now, there is no substance in the objection raised by Judgment-Debtor No. 2 for seeking stay to this execution proceeding till the decision of the same.

15) So far as, the argument advanced by the learned Advocate for Decree-holder having regard to application of principle of res-judicata to the objection raised by Judgment-Debtor No. 2 (at Exh. 22), I would like to make clear that in this petition, Judgment-Debtor No. 2 had already filed the objection application (at Exh. 13) under Section 47 of the Code of Civil Procedure. In that objection, Judgment-Debtor No. 2 had not taken any ground about the pendency of the application under Section 34 of the Arbitration & Conciliation Act before the Competent Court and application of Rule 3(b) of the National Highways (Manner of Depositing the Amount by the Central Government, Making Requisite Funds to the Competent Authority for Acquisition of Land) Rules, 2019 to this petition. At that time, Judgment-Debtor No. 2 was having every opportunity to raise such objections in the application (at Exh. 13). But he failed to do so. Now he is prevented for taking such objections under Section 47 of the Code of Civil Procedure as it is barred by the principle of res judicata.

16) In order to buttresses my aforesaid observations, I would like to rely upon the decision of *Kameshwar Singh v. Krishna-nand Singh*, AIR 1955 Pat 423, the Hon'ble Patna High Court held that where a judgment-debtor fails to raise all his objections to the execution which he might and ought to have raised and the execution is ordered to proceed, all such objections will be deemed to have been impliedly decided against him and he will be precluded

from raising the same objection at a later stage of the same execution proceedings.

17) In the case of *Usha Devi v. Devidas, AIR 1955 Bom 239*, the Hon'ble Bombay High Court observed that,

"Now it is well settled that Section 11, C. P. C. is not exhaustive and the principle of *res judicata* applies to proceedings other than suits referred to in Section 11. It is equally well settled that the principle of *res judicata* applies to execution proceedings. The principle underlying *res judicata* is that there must be a finality to litigation and the finality is arrived at not only by the court actually deciding the issue but also by the law taking the view that the court has constructively decided the issue. The law does not only not permit a party to raise a contention which has already been decided but it also prevents a party from raising a contention which he could have raised and has failed to raise."

Wherein it is further observed that,

"The principle of finality at least in this country should have greater weight in execution proceedings than even in a trial of a suit. It is notorious how long and wearily execution proceedings are dragged on and if the court refuses to give effect to the principle of *res judicata* it would be open to a judgment-debtor to raise the issue of jurisdiction at any stage of execution proceedings realizing that the other objections that he has taken have failed."

18) It is matter of the record that the Decree-holder moved application (at Exh. 12) for praying to issuance of recovery warrant of Rs. 47,74,084/- against the Judgment-Debtors. This Court called say or reply of the Judgment-Debtors on that application. Judgment-Debtor No. 2 filed its detailed reply-cum-objection (at Exh. 13) and thereby also raised objection under Section 47 of the CPC, which allegedly raised in the present application. After giving sufficient

opportunity to the rival parties, this Court allowed the application (at Exh. 12) and rejected objections raised by Judgment-Debtor No. 2 (by way of reply-cum-objection at Exh. 13). Resultantly, this Court passed order of issuance of recovery warrant against the Judgment-Debtors. Needless to say that, common order passed by this Court on the application (at Exh. 12 & 13) be treated part and parcel of the present order.

19) In the light of aforesaid discussion and common order passed by this Court on the application (at Exh. 12 & 13), it seems the Judgment-Debtors have not paid order deposited interest on the decretal amount as prayed by Decree-holder in this application. Therefore, he is entitled to recover the same. In this view, this application deserves to be allowed and following order is passed.

:- O R D E R :-

- 1.) The objections raised by Judgment-Debtor No.2 (at Exh.22) are hereby rejected.
- 2.) The application (at Exh. 21) is allowed and thereby re-issue recovery warrant of Rs.47,74,084/- (Rupees Forty Seven Lakhs Seventy Four Thousands Eighty Four Only) against the Judgment-Debtors.

Date : 19/03/2025.

Place : Jalgaon

(Sharad S. Pardeshi)
4th Joint Civil Judge Senior Division,
Jalgaon.