



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPEAL NO. 29 OF 2021

GODAVARI MARATHWADA
IRRIGATION DEVELOPMENT
CORPORATION, AURANGABAD,
Through the Executive Engineer,
Jayakwadi Irrigation Division (North),
Paithan, District: Aurangabad

**.. Appellant
(Original Respondent)**

VERSUS

S. S. DESHMUKH,
Dnyanai, Plot No.25,
Saraswati Colony No.2, Georai,
Dist. Beed

**.. Respondent
(Original Claimant)**

...
Advocate for Appellant : Mr. Sudhir Govind Bhalerao
Advocate for Respondent : Mr. Amol K. Gawali
...

**WITH
ARBITRATION APPEAL NO. 30 OF 2021**

GODAVARI MARATHWADA IRRIGATION DEVELOPMENT
CORPORATION THR EXECUTIVE ENGINEER JAYAKWADI

**VERSUS
S. S. DESHMUKH**

...
Advocate for Appellant : Mr. Sudhir Govind Bhalerao
Advocate for Respondent : Mr. Amol K. Gawali

**WITH
ARBITRATION APPEAL NO. 31 OF 2021**

GODAVARI MARATHWADA IRRIGATION DEVELOPMENT
CORPOATION THR EXECUTIVE ENGINEER JAYAKWADI

**VERSUS
S. S. DESHMUKH**

...
Advocate for Appellant : Mr. Sudhir Govind Bhalerao

Advocate for Respondent : Mr. Amol K. Gawali

**WITH
CIVIL APPLICATION NO. 7008 OF 2021
IN ARBA/30/2021**

GODAVARI MARATHWADA IRRIGATION DEVELOPMENT
CORPORATION THR EXECUTIVE ENGINEER JAYAKWADI

VERSUS

S. S. DESHMUKH

...

Advocate for Applicant : Mr. Sudhir Govind Bhalerao

Advocate for Respondent : Mr. Amol K. Gawali

**WITH
CIVIL APPLICATION NO. 7007 OF 2021
IN ARBA/29/2021**

GODAVARI MARATHWADA IRRIGATION DEVELOPMENT
CORPORATION AURANGABAD THR EXECUTIVE ENGINEER
JAYAKWADI

VERSUS

S.S. DESHMUKH

...

Advocate for Applicant : Mr. Sudhir Govind Bhalerao

Advocate for Respondent : Mr. Amol K. Gawali

**WITH
CIVIL APPLICATION NO. 7009 OF 2021
IN ARBA/31/2021**

GODAVARI MARATHWADA IRRIGATION DEVELOPMENT
CORPORATION THR EXECUTIVE ENGINEER JAYAKWADI

VERSUS

S. S. DESHMUKH

...

Advocate for Applicant : Mr. Sudhir Govind Bhalerao

Advocate for Respondent : Mr. Amol K. Gawali

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 08.05.2026

JUDGMENT:

1. Heard **Mr. Sudhir Govind Bhalerao**, learned counsel for the Appellant and **Mr. Amol K. Gawali**, learned counsel for the Respondent.

2. The matters are identical and involves similar issue, so also, to avoid rigmarole are taken up together.

3. The facts are taken up from Arbitration Appeal No.30 of 2021. Facts giving rise to the Arbitration Appeal are that the tender notice bearing No.1/1995-96 was issued by the Executive Engineer, Jayakwadi Irrigation Division (North), Paithan, Dist. Aurangabad, for execution of work for renovation and improvement of minor and sub-minor of distributory-10 of Paithan Left Bank Canal between Km.8.00 to 12.00. The estimated cost of tender was Rs.6,82,505/- and the work was to be completed within 06 months from issuance of date of work order. In all the Arbitration Appeals the work relates to renovation, improvement of minors and sub-minors of distributory of P.L.B.C. canal from from different Kilometers.

4. On 26.02.1996, the claimant was accepted as the lowest and most competent bidder who had accepted to execute the work at estimated cost of Rs.6,82,505/-. Work order was issued in favour

of the claimant on deposit of earnest amount of Rs.13,650/- and Rs.34,125/- in the form of initial security deposit.

5. On 31.12.1998, one time extension was granted. Final bill payment was made on 01.09.1999.

6. On 28.10.1999, the contractor called upon the Chief Engineer, with copy to the Executive Engineer and Superintending Engineer seeking settlement of various claims raised in the letter under different heads.

7. On 19.02.2000, notice under Section 21 invoking arbitration clause i.e. Clause No.53 of the tender condition was issued seeking appointment of Arbitrator.

8. On 02.05.2000, Shri. D. B. Murkute, (Sole Arbitrator), Retired Superintending Engineer was appointed as Sole Arbitrator by the claimant contractor.

9. On 06.06.2001, Shri. D.B. Murkute (Sole Arbitrator) along with a forwarding letter addressed to the Executive Engineer, sent a copy of Arbitration Award which was passed by him in favour of the claimant contractor.

10. The Arbitration Award passed by Shri. D. B. Murkute (Sole Arbitrator) was challenged under Section 34 of Arbitration and Conciliation Act, 1996 by the appellant (Department) by filing MARJI No. 201/2021 on 30.08.2001 and the learned Principle District Judge Shri. T. V. Nalawade on 17.08.2009 allowed the Application, thereby setting aside the Arbitration Award.

11. On 09.08.2010, the Hon'ble High Court (Coram: Shri. B. R. Gawai J.) by common judgment and order passed in Arbitration Appeal No.14/2009, 18/2009 and 19/2009 partly allowed the appeals thereby set aside the Judgment dated 17.08.2009 passed by the Principle District Judge setting aside the Arbitration Award, and also set aside the Arbitration Awards. The Hon'ble High Court appointed Shri. A. S. More (Superintending Engineer and Administrator, Command Area Development Authority, Jalgaon) to act as Sole Arbitrator and decide the Arbitration within 06 months from the date of appearance.

12. On 24.08.2010, Claim Statement were filed by the claimant contractor.

13. On 23.09.2010, Written Statement was filed by the appellant /original opponent Department.

14. On 15.11.2010, Rejoinder was filed by the claimant contractor.

15. Since the Sole Arbitrator Shri. A. S. More could not deliver the Arbitration Award within 06 months as directed by the Hon'ble High Court, and his mandate had been terminated by efflux of time, in exercise of powers under Sec. 11 (6) the Hon'ble High Court appointed Hon'ble Shri. N. P. Chapalgaonkar, Retired High Court Judge as Sole Arbitrator.

16. On 10.10.2012, pursis was filed by both the parties adopting the pleadings filed before the earlier Arbitrator Shri. A. S. More. Affidavit of Examination in Chief was filed by the claimant Shri. S. S. Deshmukh in support of his claim.

17. On 12.11.2012, the Executive Engineer Jayakwadi Irrigation Division (North), Paithan, Dist. Aurangabad filed affidavit of examination in chief in support of his defense.

18. On 19.05.2013, both the claimant and the respondent filed their written notes of argument before the Hon'ble Sole Arbitrator.

19. On 10.07.2013, the Hon'ble Sole Arbitrator declared the Arbitration Award. On an application under Section 33 a corrected

final award was declared on 08.08.2013. The Sole Arbitrator had considered and decided the following claims:

Claim No.1- Relates to non payment of cost of clearing and removing bushes, shrubs and jungle from site work, claiming Rs. 45,000/-. The claim of Rs. 45,000/- was allowed under this head.

Claim No.2- The said claim relates to three items of Schedule-B quantity for which higher rates were demanded as per tender conditions for quantities executed above 130%.

1) Item No.3- excavation of soil, silt and soft murum. The Arbitrator rejected the claim under this head.

2) Item No.9- In respect of construction of embankment in casing zone, including transportation of material with leads. The Arbitrator awarded Rs. 22,170.40 under this head.

Claim No.3- The claimant had claimed Rs. 3,00,000/- for repairs which he was required to carryout from 04.07.1997 till 31.03.1999 as per the direction of the respondent Department. The Sole Arbitrator based on evidence before him recorded that, the claimant was required to maintain the work and continuously carryout the repair work till 31.03.1999, since the Department was making inquiry about the finalization of bill. The Sole Arbitrator granted Rs. 1,50,000/- under this head.

Claim No.4- For refund of security deposit amounting to Rs. 53,639/- towards initial security deposit. The Hon'ble Sole Arbitrator awarded Rs. 53,639/-.

The Sole Arbitrator granted 18% interest from 31.03.1997 on the awarded amount (Total Rs. 2,70,809.40) i.e. Rs. 6,75,643.30. Thus the Sole Arbitrator awarded amount of Rs. 9,46,425/- to be paid before 10.07.2013 and in the eventuality of non payment directed that, the same would carry at the rate of interest @ 18% till realization. By virtue of the corrected award dated 08.08.2023 the Sole Arbitrator rejected the objection as to jurisdiction raised by the respondent.

20. On 25.11.2013, MARJI No.596/2013 was filed by the appellant Department challenging the Arbitration Award under Section 34 of the Arbitration Act. The paragraph No.9 of the Appeal Memo records that, for the purpose of court fees and jurisdiction the claim is valued at Rs. 11,31,441/-.

On 22.02.2016, the challenge to the Arbitration Award under Section 34 of the Arbitration and Conciliation Act, 1996, in the form of MARJI No. 596/2013 was rejected by the Learned Principle District Judge, Aurangabad.

21. On 23.01.2020, by common judgment and order passed by the Hon'ble High Court (Coram: Shri. Rohit B. Deo J.) in Arbitration Appeal No. 5/2017, 6/2017 and 7/2017, while hearing a appeal under Section 37 of the Arbitration and Conciliation Act, 1996, the same was partly allowed, remitting the matters to the Principle District Judge, Aurangabad to decide the Arbitration Application under Section 34 on its own merits within a period of 90 days from date of appearance. The amount of Rs. 60,00,000/- which was deposited by the appellant Department, out of which 50% was allowed to be withdrawn by the respondent on undertaking. The undertaking given by the Contractor to reimburse the said amount was continued till decision of application under Section 34.

22. On 04.01.2021, the learned Principle District Judge, Aurangabad as per directions of the Hon'ble High Court reheard the advocate for both the parties and decided the Civil Misc. Application No. 596/2013.

23. In March-2021, the judgment and decree dated 04.01.2021 passed by the Principal District Judge, Aurangabad in Civil Misc. Application No. 596/2013 was challenge by filing Arbitration Appeal No. 30/2021 i.e. the present Arbitration Appeal

before the Hon'ble High Court under section 37 of the Arbitration and Conciliation Act, 1996.

{ 1 } JURISDICTION:

A) Contention of Advocate for Appellant:-

24. The Principal District Judge, Aurangabad while passing impugned judgment dated 04.01.2021, while deciding the Civil Miscellaneous Application No. 596/2013 did not have jurisdiction to decide the same, since the Arbitration Award under challenge under Section 34, being in the nature of commercial dispute, ought to have been placed before the commercial court, which had exclusive jurisdiction to decide the Civil Miscellaneous Application No. 596/2013.

25. Thus, in the light of the fact that, by placing reliance on the Government Notification dated 03.07.2019, issued by the Law and Judiciary Department, whereby in exercise of power conferred under Section 3-A of the Commercial Courts Act, 2015 (as amended in 2018), the District Judge-1 at the District Head Quarter, was recognized as 'Commercial Court' in Maharashtra, the jurisdiction of the Principal District Judge, Aurangabad was impliedly barred. The impugned judgment was therefore passed without jurisdiction.

B) Submissions of Advocate for the Respondent :-

26. The Advocate for the respondent placed on record the notification dated 03.07.2019 issued by the Law and Judiciary Department under the signature of the Secretary Legal Advisor Cum Joint Secretary to the Government, which was issued under powers conferred under Section 3 (1A) of the Commercial Courts Act, 2015 (as Amended in 2018), wherein the Government of Maharashtra in consultation with the High Court of Bombay had specified the pecuniary value of the Commercial Courts as Rs. 50,00,000/- within whole of Maharashtra.

27. He has further placed a office order issued by the Principal District and Sessions Judge, Aurangabad bearing No. B-2 (10/2019), dated 22.08.2019, wherein the learned Principal District Judge exercising administrative power in furtherance of the above notification has bestowed the power of Commercial Court on the Civil Judge, Senior Division (Senior most), Aurangabad to decide Commercial Dispute at District Level of specified value above Rs. 50,00,000/- (Rupees Fifty Lacs) and upto and inclusive of Rs. 1 Crore.

28. The Advocate for the respondent Contractor pointed out from the Appeal Memo of MARJI No. 596/2013 that the valuation for the purpose of court fees and jurisdiction in the present appeal

is Rs.11,31,441/- (Rupees Eleven Lacs Thirty One Thousand Four Hundred Forty one), which is below Rs. 50,00,000/-lacs.

Similarly, the claim in MARJI No. 594/2013 (Arbitration Appeal No.29 of 2021) is valued at Rs.10,56,107/- and in MARJI No. 595/2013 (Arbitration Appeal No.31 of 2021) is valued at Rs.11,87,541/-, which is also below Rs. 50,00,000/-lacs.

29. This court finds that in view of the Notification dated 03.07.2019 issued by Law and Judiciary Department and administrative order passed by the Learned Principal District Judge on the administrative side, 'the commercial dispute' of specified value above Rs. 50,00,000/- are to be decided by the Commercial Court. Since the value of the dispute in the Arbitration Appeal under challenge is much below Rs. 50,00,000/-, the regular court i.e. the Principal Court of civil jurisdiction i.e. the Principal District Judge had the jurisdiction to decide the Arbitration Application under Section 34.

30. Thus the impugned judgment and order does not suffer any jurisdictional error, since it is passed by a court having jurisdiction to pass the impugned judgment and order.

02. Limitation:-

A) Contention of the Advocate for the appellant Department:

31. The Advocate for the appellant Department by placing reliance on the unreported Judgment passed in **Arbitration Appeal No. 6/2007 (State of Maharashtra V/s Hindustan Construction Company and others)**, wherein this Hon'ble Court (**Coram: Shri. R. D. Dhanuka, J.**) had pronounced the judgment on **01.02.2013**, contended that, the limitation would be governed by Article 18 of the Limitation Act, which reads as under-

Article	Description of application	Period of limitation	Time from which period begins to run
18	For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	When the work is done.

32. Placing reliance on the above Judgment it was contended that, the last extension was granted to the contract awarded to the respondent was 31.12.1998, therefore the Arbitration Proceedings initiated by the claimant are barred by limitation, and therefore, the award deserves to be set aside.

33. It is his contention that, neither the learned Sole Arbitrator nor the Learned District Judge has considered the objection as to limitation which had been raised by the appellant Department.

B) Submissions of Advocate for the Respondent :-

34. The Advocate for the respondent, pointed out that, it is a admitted fact that, the final bill has been paid on 01.09.1999.

35. The Advocate for the respondent by drawing attention of the court to the discussion while granting Claim No.3 (*Para No. 12 of the Arbitration Award, Page No. 17 to 19 of the Appeal Memo*), pointed out that, the Sole Arbitrator had held that, in absence of final bill the contractor was required to work beyond the contract period (including extensions) from 04.07.1997 to 31.03.1999 and the Arbitrator under this head had paid Rs. 1,50,000/- to the contractor.

36. It was also pointed out from the record that, the notice under section 21 invoking Arbitration Clause was issued on 19.02.2000.

37. He has placed reliance on several Judgments, which lay down that, the limitation would start from the date of final bill, since the point of dispute would only arise after the contractor becomes aware of the fact that, his claims have been finally rejected on account of non payment of the same in the final bill.

38. This court in the case of **Executive Director, G.M.I.D.C. and others Vs. M/s Gurunanak Industries and another**, dated **17.01.2026**, at Paragraph No.40, has observed as under:

“40. Article 18 of the Schedule to the Limitation Act, 1963 would apply only where the amount payable is known and becomes payable on completion of work. However, in the present case, although the physical work may have been completed on 30/06/2013, the measurement of the work and the escalated price was yet to be computed. The final bill was required to be prepared after joint measurement and after working out the escalation under the contractual clause. Therefore, limitation would commence only upon denial or partial payment of the final bill which occurred on 12/04/2016. The suit is filed on 21/12/2017 and is within three years of payment of partial final bill and is thus within limitation and would be covered under Article 55, of the Limitation Act.”

39. In Arbitration Appeal No.30 of 2021, the date of payment of final bill is 01.09.1999 and the notice under Section 21 was issued on 19.02.2000 and on 02.05.2000 the Arbitrator was appointed.

In Arbitration Appeal No.29 of 2021, no final bill was prepared or paid and the notice under Section 21 was issued on 19.02.2000 and on 02.05.2000 the Arbitrator was appointed.

In Arbitration Appeal No.31 of 2021, no final bill was prepared or paid and the notice under Section 21 was issued on 19.02.2000 and on 02.05.2000 the Arbitrator was appointed.

As such, the claims filed before the Arbitrator are in limitation.

40. In view of the above, the Arbitration Appeals are dismissed.

[ARUN R. PEDNEKER, J.]

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