



Serial No.01
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No.31/2024

Date of Judgment: 03.11.2025

1. The Director General of Assam Rifles, HQ, DGAR, Laitkor, Shillong.

2. The Chief Engineer, HQ, DGAR, Laitkor, Shillong Petitioners

Vs.

1. M/s Rabinderjit Singh & Sons, Engineers and Builders, Opp. Don Bosco House, Signal Basti, Dimapur-797112

2. The Chairman and Managing Director, National Projects Construction Corporation Ltd. (NPCC) North East Zone (Central) Band Stand, Madanriting, Shillong 793021. Registered Officer: Raja House, 30-31 Nehru Place, New Delhi 110019. Respondents

Coram:

Hon'ble Mr. Soumen Sen, Chief Justice

Appearance:

For the Petitioners : Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv

For the Respondents : Mrs. P.D.B. Baruah, Sr.Adv with
Mr. B.A. Wanswett, Adv
Mr. A. Singh, Adv

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

**JUDGMENT: (Oral)**

This is an application under Article 227 of the Constitution of India in which the orders passed by the learned Judge, Commercial Court, Shillong on 21.12.2023 and 09.04.2024 in Commercial Arbitration Execution No.7 of 2022 has been assailed by the petitioners.

2. A preliminary objection has been raised on behalf of the award holder with regard to the maintainability of this petition. Needless to mention that the said maintainability issue is without any merit and substance having regard to the nature of power the constitutional court under Article 227 of the Constitution of India and also having regard to the fact that the impugned orders are neither appealable nor revisable in terms of the Commercial Courts Act, 2015 or it does provide any remedy under Section 37 of the Arbitration and Conciliation Act, 1996.

3. The award debtor cannot be remediless.

4. It appears that the present petitioners have suffered an award and in the said proceeding an application was filed by the award holder for withdrawal of the awarded amount on conditions. The learned Commercial Judge in allowing the application filed in the execution proceeding has permitted the award holder to withdraw 50% of the



awarded sum upon furnishing bank guarantee and 50% upon furnishing indemnity bond along with an affidavit of assets. Normally, such order is passed in a proceeding for injunction or attachment before judgment provided the court is satisfied that there is a possibility in the event the decree is passed, the decree holder would be remediless. In the instant case, there is no possibility of the decree holder being not compensated or receive the awarded sum in the event the application for setting aside the award is allowed. Moreover, the application for setting aside of the award is pending and the Commercial court is seisin over the matter. In the event the award is set aside, whether the respondent would be able to realise the said sum from the award holder in respect of the amount likely to be covered by the indemnity bond supported by an affidavit and if in the meantime, the award holder becomes insolvent are matters to be considered. The convenience and inconvenience of the award debtor in realising the amount if already paid is also a factor to be taken into consideration.

5. The finality of the award is attached only when the award sustained the stages through which it has to pass under the Arbitration and Conciliation Act, 1996. The exercise of discretion by the learned



judge in my view is not proper in the sense that the learned judge has failed to take into consideration the consequences that might result from the award being set aside and the difficulty that the petitioners might face in realising the said amount. Accordingly, I modify the impugned orders passed by the learned commercial judge by giving liberty to the award holder to withdraw balance 50% of the awarded sum upon furnishing bank guarantee to the satisfaction of the learned commercial judge.

6. Request is also made to the learned commercial judge to expedite the hearing of the application for setting aside the award.
7. The impugned orders stand modified to the aforesaid extent.
8. Accordingly, this revision petition is disposed of.
9. However, there shall be no order as to costs.

(Soumen Sen)
Chief Justice