

# RAJASTHAN HIGH COURT

Air Conditioning Corpn.Ltd.

Vs.

Rajasthan Agriculture University

Civil Revn.Petn. Nos. 1073 and 1074 of 2002

(Sunil Kumar Garg, J.)

12.08.2004

## ORDER

**Sunil Kumar Garg, J.**

1.The abovementioned two revision petitions are being disposed of by this common judgment as in both of them common questions of law and facts are involved:

Facts of Revision Petition No. 1073/2002

2. In this revision, an application dated 5-6-2004 was filed on behalf of the petitioner under Section 151, Criminal Procedure Code with a prayer that since award dated 14-8-2003 has been passed by the Arbitrator in its favour, therefore, the respondent be directed to make payment of amount of Bank guarantees to the tune of Rs. 33,91,282/- to the petitioner immediately along with interest @12% per annum.

3. It arises in the following circumstances:

(i) That tenders were invited by the respondent for construction of health centre and stadium (Package VI) and the tender submitted by the petitioner firm was accepted by the respondent and an agreement between the parties was executed on 26-2-1998 and the total cost of work as estimated was about 2.49 crores. As per the contractual conditions, four bank guarantees were furnished by the petitioner from the Central Bank of India, Kolkata Branch, Kolkata.

(ii) Since a dispute arose between the parties, respondent terminated the contract executed on 18-5-1999 and thereafter the respondent attempted for invocation of the bank guarantees furnished by the petitioner firm.

(iii) There was a Clause 25.3(F) in the agreement to the effect that in case there was some dispute, the same may be referred to the sole Arbitrator and in

pursuance of the above Clause, the matter was referred to sole arbitrator and on 7-8-99, Sh. O. P. Goel was appointed as sole arbitrator.

(iv) That the proceedings before the sole arbitrator were going on, the petitioner-firm submitted an application on 25-3-2002 under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) asking for certain interim measures of protection in respect to the bank guarantees furnished by it to the respondent in connection with the said contract.

(v) After hearing both the parties, through order dated 23-6-2002, the sole Arbitrator allowed the application filed under Section 17 of the Act of 1996 by the petitioner-claimant in the following manner :

"Keeping the three principles of *prima facie* case, balance of convenience, and the possibility of irretrievable loss, I find that the justification lies in allowing protection of the property of the claimants in the hands of the respondents that is the bank guarantees, as per authorization given to the arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996. I, therefore, order that the respondents should preserve the bank guarantees as detailed in the application as a property of the claimants. I am simultaneously, providing security to the respondents by ordering that the claimants should ensure that they keep the bank guarantees valid and alive till such time the final award in the disputes under arbitration with me is issued. Thus, the respondents shall refrain from invoking the bank guarantees and the claimants shall ensure keeping the bank guarantees alive and valid till the final award in the case is issued by the arbitrator."

4. Aggrieved from the order dated 23-6-2002, the respondent preferred an appeal before the Dist. Judge under Section 37 of the Act of 1996 and the Dist. Judge through judgment dated 16-10-2002 allowed the appeal and set aside the order dated 23-6-2002 passed by the sole Arbitrator Shri O. P. Goel.

5. Aggrieved from the judgment dated 16-10-2002 passed by the Dist. Judge, Bikaner, the present revision petition has been preferred by the petitioner.

6. When the revision petition was pending before this Court, this Court after hearing both the parties passed the following order on 11-11-2002 on the stay application :

"The learned counsel for the petitioner submits that the respondent(s) has already encashed the bank-guarantees and further requested till 11-11-2002. The respondent may be restrained not to disburse the encashed amount till 11-11-2002. The respondent is directed not to disburse the encashed bank guarantee till 11-11-2002."

7. It may further be stated here that the order dated 1-11-2002 was confirmed by this Court vide order dated 10-12-2002.

8. Now the present application under Section 151, C.P.C. has been filed by the petitioner in the abovementioned revision petition on 5-6-2004 *inter alia* stating that since the final award has been passed by the Arbitrator on 14-8- 2003 in favor of the petitioner-claimant and further that award has been published on 6-5-2004 and therefore, now the respondent be directed to make payment of bank guarantees with interest as per the terms of the award dated 14-8-2003.

9. Before proceeding further relevant portion of the final award dated 14-8- 2003 passed by the sole arbitrator is quoted hereunder:

"These bank guarantees therefore need to be released to the claimants. It is, therefore, decided that the respondents should release these bank guarantees and in case the Bank guarantees have already been encashed, the respondents should refund the amount of the Bank Guarantees, thus encashed by them to the claimants along with interest from the date of encashment to the date of payment @12% per annum."

10. Heard the learned counsel for the petitioner as well as learned counsel for the respondent on application dated 5-6-2004 as well as on revision petition.

11. There cannot be any dispute on the point that if any final order is passed in the proceedings either before the Arbitrator or before the Civil Court or before any other forum, life of the interim order comes to an end with the passing of final order in that proceedings. When this being the position, no doubt, in the present case, interim order dated 23-6-2002 was passed by the sole Arbitrator and the said interim order dated 23-6-2002 was set aside by the Dist. Judge, Bikaner, but since life of the interim order dated 23-6-2002 passed by the Sole Arbitrator had come to an end with the passing of final award dated 14-8-2003 by the Sole Arbitrator, this revision petition has become in fructuous and deserves to be dismissed as being infructuous. This is one of the aspects of the present case.

12. The next question which arises for consideration is whether any order can be passed in the present revision petition directing the respondent to release the amount of bank guarantees as per the terms of final award dated 14-8-2003 which was passed in favor of the petitioner and against the respondent in respect of bank guarantees furnished by the petitioner.

13. There is no dispute on the point that the Arbitrator has specifically ordered in his award dated 14-8-2003 that the amount of bank guarantees be released along with interest in favor of the petitioner. From that point of view, the petitioner is entitled to the amount of bank guarantees as per the directions of the Arbitrator given in his award dated 14-8-2003.

14. As stated above, life of the present revision petition has come to an end as soon as final award dated 14-8-2003 was passed and therefore, in my considered opinion, in revisional jurisdiction, this Court cannot give any direction for execution of terms of the final award dated 14-8-2003 as prayed by the learned Counsel for the petitioner because it will be the domain of the Executing Court before whom Execution petition for execution of the award dated 14-8-2003 would be presented.

15. There can also be no dispute on the point that the application for setting aside arbitral award can be filed by aggrieved party under Section 34 of the Act of 1996 before the Dist. Judge and the learned counsel for the respondent has submitted that either the application under Section 34 of the Act of 1996 would have been filed for setting aside the final award dated 14-8-2003 or if same has not been filed, the same is in the process to be filed.

16. In my considered opinion, for the reasons mentioned above and looking to the facts and circumstances of the present case whether the execution of the final award dated 14-8-2003 can neither be enforced by this Court nor can be stayed in the revisional jurisdiction as it will be the domain of the Dist. Judge (in the present case the Dist. Judge, Bikaner) before whom application under Section 34 of the Act of 1996 would have been filed and thus, this Court in revisional jurisdiction cannot exercise the powers of the Dist. Judge's Court.

17. In view of the above circumstances, this Court while dealing in revisional jurisdiction cannot pass any final order in terms of the final award dated 14-8-2003 though as per the terms of the final award dated 14-8-2003 passed by the Sole Arbitrator the amount of Bank guarantees should be released to the petitioner.

18. Since there was stay order passed by this Court on 1-11-2002 by which the respondent was directed not to disburse the amount of bank guarantees, therefore, in the facts and circumstances of the present case and looking to the equity which is in favor of the petitioner as final award dated 14-8-2003 has been passed in favor of the petitioner, this Court can only extend the stay order dated 1-11-2002 for two months from today so that in the meanwhile, the respondent can approach the concerned Court

for taking steps for staying the operation of the final award dated 14-8-2003 passed by the Sole Arbitrator or the petitioner can approach the Executing Court for execution of the final award dated 14-8-2003 passed by the sole arbitrator.

19. For the reasons mentioned above, the present revision petition deserves to be dismissed as being infructuous and the application dated 5-6-2004 filed by the petitioner under Section 151, C.P.C. deserves to be disposed of in the following manner :

(i) The present revision petition No. 1073/2004 filed by the petitioner is dismissed as being infructuous.

(ii) That the stay order passed by this Court on 1-11-2002 by which the respondent was directed not to disburse the encashed amount of bank guarantees is extended for two months from today.

(iii) However, it is made clear that if in the meantime any order is passed by the Dist. Judge, Bikaner when an application under Section 34 of the Act of 1996 is made for setting aside the final award dated 14-8-2003, this order would not come in this way and if any order has already been passed by the learned Dist. Judge on that application, this order would not come in his way.

REVISION PETITION NO. 1074/2002

20. In light of the decision given in S. B. Civil Revision Petition No. 1073/2002, the revision petition No. 1074/2002 also deserves to be disposed of.

Accordingly, the revision petition No. 1074/2002 is disposed of in light of the decision given in S. B. Civil Revision Petition No. 1073/2002.

Order accordingly.