

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO**

I.A.NO.1 OF 2025

IN/AND

CIVIL REVISION PETITION NO.1620 OF 2025

Dr. P. Bhaskara Mohan, learned counsel appearing for the petitioner.

Mr. A. Venkatesh, learned Senior Counsel representing Mr. G. Kalyan Chakravarthy, learned counsel for the respondent.

ORDER: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The Civil Revision Petition (CRP) arises out of a docket order dated 10.03.2025 passed by the Commercial Court in an application filed by the Award-holder for withdrawing an amount of Rs.1,18,50,000/- deposited by the Award-debtor.

2. After hearing the arguments made on behalf of the parties, the Commercial Court on 10.03.2025 allowed the petition filed by the Award-holder by permitting the petitioner to withdraw the amount deposited by the respondent in compliance with the order passed by a Co-ordinate Bench on 05.12.2024 in an Appeal filed by the respondent subject to furnishing of a bank guarantee.

3. The order of the Co-ordinate Bench was passed in C.O.M.C.A.No.36 of 2024 in an Appeal filed by the respondent against the dismissal of the respondent's application for setting-aside of the Award under section 34 of The Arbitration

and Conciliation Act, 1996. The Co-ordinate Bench had directed the respondent (the appellant in C.O.M.C.A.No.36 of 2024) to deposit 50% of the amount awarded by the Arbitral Tribunal within a certain time frame as a condition for stay of execution of the Award. The petitioner/Award-holder (the respondent No.1 before the Co-ordinate Bench) was given the liberty of filing an application for withdrawal of the amount deposited by the Award-debtor.

4. The docket order dated 10.03.2025 which is under challenge in the present CRP permitted the petitioner/Award-holder to withdraw the amount deposited by the respondent subject to the petitioner furnishing a bank guarantee equivalent to the amount accompanied with an undertaking for the amount withdrawn.

5. Learned counsel appearing for the petitioner/Award-holder submits that the petitioner is facing great difficulty in arranging for a bank guarantee of an equivalent amount since the bank is insisting on a 100% margin for the bank guarantee. Counsel relies on decisions to show that it is not necessary for an Award-holder to furnish a bank guarantee for withdrawing the security put in by the Award-debtor.

6. Learned Senior Counsel appearing for the respondent/Award-debtor submits that furnishing of a bank guarantee for the amount withdrawn is necessary in the event the respondent succeeds in the Appeal filed under section 37 of the 1996 Act. Senior Counsel relies on several cases to show that the Courts have usually insisted on the Award-holder furnishing equivalent security for withdrawing the amount put in by the Award-debtor.

7. We have considered the submissions made on behalf of the parties.

8. The undisputed facts show that the petitioner, who was the claimant in the Arbitration, was awarded approximately Rs.2.38 crores. The respondent unsuccessfully applied for setting-aside of the Award and later approached the Co-ordinate Bench in an Appeal from the order of dismissal of the respondent's setting-aside application. The Co-ordinate Bench stayed execution of the Award subject to the respondent depositing 50% of the awarded amount, which comes to Rs.1,18,50,000/-.

9. Hence, as things stand today, the Award-holder is yet to reap the benefits of the Award dated 19.09.2017, i.e., for almost 8 years. The execution of the Award has also been stayed. The Award-debtor has also not got the benefit of withdrawing the

amount of 50% of the awarded amount deposited by the respondent, i.e., Rs.1,18,50,000/- till date. What the Award-holder essentially seeks, that too after 8 years, is that the Award-holder should at least be permitted to withdraw 50% of the awarded amount deposited by the Award-debtor, which comes to Rs.59,25,000/- and be allowed to furnish security for the remaining amount. This means that the Award-holder will only have the benefit of the liquid amount of 25% of the awarded amount and is ready to furnish security for the remaining 25% of the awarded amount/amount deposited by the Award-debtor.

10. We do not find the said request unreasonable in any form. The Award-holder is certainly entitled under the 1996 Act to enjoy the fruits of the Award particularly when the execution thereof has been stayed. There is no finding by any Court that the Award-debtor faces a real risk of the amount not being made good by the Award-holder if the Award-debtor were to succeed in the section 37 Appeal.

11. I.A.No.1 of 2025 is accordingly disposed of by permitting the Award-holder/petitioner to withdraw Rs.59,25,000/- without furnishing any security. The Award-holder shall be at liberty to furnish security for the remaining Rs.59,25,000/- in any other form to the satisfaction of the Trial Court including by way of a

bank guarantee. The Award-debtor shall not put any further hurdles in the way of the Award-holder from withdrawing 50% of the amount deposited by the Award-debtor.

12. C.R.P.No.1620 of 2025, along with all connected applications, is accordingly disposed of.

Interim orders, if any, shall stand vacated. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

B.R.MADHUSUDHAN RAO, J

Date: 09.06.2025
NDS/SUS