



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11827 OF 2023**

Solapur Municipal Transport Undertaking .. Petitioner  
**Versus**  
 Ashok Leyland Ltd. and Anr. .. Respondents

**WITH  
WRIT PETITION NO. 6147 OF 2024**

Ashok Leyland Ltd. .. Petitioner  
**Versus**  
 Solapur Municipal Corporation and Anr. .. Respondents

- .....
- Mr. Vijay Killedar, Advocate for Petitioner in WP/11827/2023 and Respondent No.2 in WP/6147/2024.
  - Dr. Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Dinesh Purandare i./by Sujit Lahoti & Associates for Petitioner in WP/6147/2024 and Respondent No.1 in WP/11827/2023.
  - Ms. Geeta R. Shastri, Advocate for Respondent No.1 in WP/6147/2024 and Respondent No.2 in WP/11827/2023.
- .....

**CORAM : MILIND N. JADHAV, J.**  
**DATE : JANUARY 02, 2025.**

**JUDGMENT:**

**1.** This is a group of two Writ Petitions, both impugning the order dated 27.06.2023 passed by the learned District Judge, Solapur in Application below Exhibit “5” in Civil Miscellaneous Application (for short “**CMA**”) No.160 of 2019 filed by Solapur Municipal Transport Undertaking (hereinafter referred to as “**Undertaking**” for the sake of brevity).

**2.** Writ Petition No.11827 of 2023 is filed by the Undertaking who is the Claimant in Arbitration proceedings, whereas, Writ Petition No.6147 of 2024 is filed by Ashok Leyland Ltd. (hereinafter referred to as “**Company**” for the sake of brevity) who is the Respondent – Counter-Claimant in the Arbitration proceedings. Solapur Municipal Corporation is referred to as “**Corporation**” for the sake of brevity.

**3.** By the impugned order dated 27.06.2023, learned District Judge allowed Application below Exhibit “5” and granted stay on execution and implementation of the Award of Counter Claim of Rs.21,32,58,592/-, Rs.4,54,06,000/- and Rs. 3,31,60,000/- payable alongwith interest, subject to the Undertaking depositing 50% of the aforesaid amount. Amounts as directed are not deposited. By consent and at joint request of both parties, both Petitions are heard finally.

**4.** Brief facts necessary for adjudication of the present Petitions are as under:-

**4.1.** On 12.12.2013, the Undertaking invited bids through e-tendering, *inter alia*, for supply (including design, manufacture, testing and commissioning as per the Urban Bus Specifications – II specifications confirming to ‘Bharat Stage-IV’) of 145 fully built 650 mm floor clearance height standard non-AC (BS-IV) buses (for short “**Jan (जन) buses**”), 20 fully built 400 mm floor clearance height premium segment AC buses and 35 fully built 900 mm floor clearance height Midi non-AC buses.

**4.2.** The Company participated in the tender process and was awarded the contract for 145 Jan (जन) buses and 35 Midi non-AC buses. On 14.02.2014, Undertaking issued purchase order No.2 for 145 Jan (जन) buses for a total consideration of Rs.80,62,00,000/- and purchase order No.3 for 35 Midi non-AC buses.

**4.3.** In compliance of the terms of Contract, Company furnished performance security in the form of Bank Guarantee (for short “**Performance Bank Guarantees**”) for Rs.4,03,10,000/- towards 145 Jan (जन) buses and a further Bank Guarantee for Rs.50,96,000/- towards 35 Midi non-AC buses .

**4.4.** Sometime between October 2014 and April 2015, Company supplied 99 Jan (जन) buses to the Undertaking as per the Contract. Undertaking made part-payment of the entire purchase consideration amount for 99 buses and withheld the balance amount of Rs.21,32,58,592/- alleging manufacturing defect in the buses which were already supplied.

**4.5.** On 21.12.2016, the Undertaking invoked Arbitration proceedings against the Company by addressing a letter to the Sole Arbitrator Mr. A.R. Joshi (Retired Judge) as per Section 29A (1) of the Arbitration and Conciliation Act, 1996 (for short “**the said Act**”).

**4.6.** On 09.02.2017, the Company filed Application under Section 17 of the said Act seeking urgent interim relief to restrain the

Undertaking from invoking the two Performance Bank Guarantees. During pendency of this Application, the Undertaking encashed the Performance Bank Guarantee. By consent of the parties, learned Arbitrator passed order dated 15.04.2017 directing the Undertaking to deposit amount of Rs.4,54,06,000/- which was received on encashment of the Performance Bank Guarantee in a Fixed Deposit Account and handover the original Fixed Deposit Receipt to the learned Arbitrator which would be held subject to the final outcome of Arbitration proceedings.

**4.7.** In the Arbitration proceedings, the Undertaking – Claimant filed its Statement of Claim and made the following claims due to manufacturing defect as delineated in paragraph No.5(xv) thereof:-

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount claimed in INR</b>
<b>1.</b>	Amount paid towards price of 99 Jan buses alongwith interest @ 18% p.a. from 19.03.2015 till realization.	33,79,00,000/-
<b>2.</b>	Loss of revenue as the 87 buses were grounded since 31.03.2017.	27,07,88,952/-
<b>3.</b>	Parking Charges on account of the grounding od 87 buses from 31.03.2017.	1,05,81,000/-
<b>4.</b>	Expenses towards security of 87 buses.	34,34,820/-
<b>5.</b>	Charges for alternate transport arrangement during the election held in Solapur Municipal Corporation during February 2017.	14,19,400/-
<b>Total Claim Amount</b>		<b>62,41,24,172/-</b>

**4.8.** In the alternative, the Undertaking prayed for replacement of all 99 Jan (जन) buses by the Company.

**4.9.** The Company resisted and denied the claim of the Undertaking and filed its Statement of Defence alongwith its Counter Claim seeking the following amounts from the Undertaking:-

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount claimed in INR</b>
<b>A.</b>	Total outstanding balance owed from the Undertaking to Company towards balance payment for the 99 buses.	21,32,58,592/-
<b>B.</b>	Interest @ 12% p.a. compounded quarterly as on 31.05.2017 (for 27 months).	5,75,79,820/-
<b>C.</b>	Interest on Inventory Holding cost for 46 buses at the rate of 12% p.a. compounded quarterly as on 30.05.2017.	4,79,62,895/-
<b>D.</b>	Loss of sale on 8 buses out of the 46 buses mentioned above.	1,04,00,000/-
<b>E.</b>	Loss on account of illegal encashment of the two Performance Bank Guarantees which was paid to the Undertaking on 09.02.2017.	4,54,06,000/-
<b>F.</b>	Interest @ 12% on illegal encashment of the Performance Bank Guarantee.	18,16,240/-
<b>G.</b>	Loss of reputation and goodwill in the market as a result of Undertaking's wrongful proclamation that there are manufacturing defects in the buses supplied by the Company.	37,46,07,307/-
<b>H.</b>	Add: Interest @ 12% on the total claim till the final outcome of the Counter Claim and realization thereof.	
<b>Total Claim Amount (A+B+C+D+E+F+G)</b>		<b>75,10,30,854/-</b>

**4.10.** On 16.04.2019, the learned Arbitrator passed the Arbitral Award in the Arbitration proceedings between the parties by directing the Undertaking to pay to the Company amounts of Rs.45,05,90,370/-, Rs.1,27,43,508/- and Rs.4,95,94,641/-.

**4.11.** The Undertaking challenged the Arbitral Award by filing CMA No.160 of 2019 before the District Judge, Solapur under Section 34 of the said Act. On 20.07.2019, Undertaking filed Application below Exhibit "5" seeking stay on the operation and execution of the Arbitral Award dated 16.04.2019.

**4.12.** On 27.06.2023, the District Judge, Solapur passed the impugned order on Exhibit "5" Application, allowing the Application of the Undertaking for stay on operation and execution of the Arbitral Award subject to deposit of 50% of the Award amount.

**4.13.** Writ Petition No.11827 of 2023 is filed by the Undertaking for setting aside the impugned order dated 27.06.2023 to the extent of the condition of deposit of 50% of the Award amount.

**4.14.** Writ Petition No.6147 of 2024 is filed by the Company to the limited extent of challenging the impugned order dated 27.06.2023 for seeking direction to the Undertaking to deposit the entire Award amount in place of 50% of the Award amount as directed to be deposited.

**4.15.** CMA No.160 of 2019 is pending final adjudication before the District Judge. Five years have already been lost in the meanwhile. I persuaded the parties to agree for a time bound disposal of the Civil Miscellaneous Application within six (6) months, but there was no agreement between the parties on the issue of interim deposit and hence the Petitions are heard on merits.

**4.16.** It is seen that the interim order below Exhibit "5" is not stayed. In the meanwhile, the Company filed execution proceedings. I persuaded the parties to agree to go back before the Trial Court and determine pending CMA No.160 of 2019 in a time bound programme since 5 years have already lapsed. Mr. Killedar obtained appropriate instructions and informed the Court that they were willing to go back to the Trial Court for a decision on their challenge to the Award. I therefore impressed upon Mr. Killedar to show his bonafides. After taking instructions, he placed before me letter dated 26.03.2024 giving instructions and agreeing to deposit 25% of the principal amount in the Award. On placing that letter before me, Mr. Killedar argued that the Undertaking is a government body in the public domain and it requires to cater to public utility and provide services to the public. He would submit that maintenance of the existing fleet of buses and payment of huge monthly salary to the staff are two major expenditures incurred on a month to month basis and hence he would urge the Court to permit the Court to deposit 25% of the principal

amount amounting to approximately Rs.6,16,04,648/-and remand the matter for hearing of CMA No.160 of 2019 as deemed fit by the Court.

**4.17.** Mr. Tulzapurkar, learned Senior Advocate appearing on behalf of the Company upon instructions would submit that he has instructions to oppose the above submissions made by Mr. Killedar. He would cite two grounds; firstly that his clients have filed a companion Writ Petition No.6147 of 2024 being heard together to challenge the deposit order of 50% of the Award amount as according to them, the deposit ought to be 100 % for granting stay on the Award and secondly in view of the findings returned in the Award on merits of the case, the Undertaking has failed miserably and hence they do not deserve any leniency whatsoever. The Company i.e. Ashok Leyland Ltd. is unrelenting and has invited an order on merits. Submissions of the learned Advocates for the respective parties have therefore been delineated in detail as argued by them herein above.

**5.** Mr. Killedar, learned Advocate for the Undertaking would submit that the Jan (जन) buses were supplied by the Company pursuant to a cover agreement dated 14.02.2014 wherein it was agreed that the warranty period of the buses would be 2 years or 2,00,000 kms., whichever is earlier. He would submit that as per the Urban Bus Specifications – II, the life cycle requirement of the Jan (जन) bus is 12 years or 10,00,000 kms, whichever is earlier. He would



submit that in the present case, majority of the 99 buses supplied by the Company developed cracks in their chassis within a period of 1 year only. He would submit that there is a Code of Practice for Bus Body Design and Approval as per the Automotive Industry Standards (AIS – 052) set up by the Ministry of Shipping, Road Transport & Highways (Department of Road Transport & Highways), Government of India in March, 2008. Under the said code, the term ‘vehicle’ mentioned therein would mean a four or more wheeled motor vehicle designed and constructed for the purpose of transportation of 13 passengers or more. He would submit that the buses supplied by the Company would undisputedly fall within the meaning of the term ‘vehicle’ set out in the said code.

**5.1.** He would submit that clause No.3.20.1 of the said Code (AIS-052) is relevant in the present case. It provides that alteration shall not be permitted on the chassis or any of its aggregates or components and further provides that any such alterations would invite fresh type approval of the design and the prototype of the bus.

**5.2.** He has drawn my attention to Section 52 of the Motor Vehicles Act, 1988 (for short “**MV Act**”) which deals with alteration in vehicles. Section 52 reads thus:-

**“52. Alteration in motor vehicle.—**

*(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at*

*variance with those originally specified by the manufacturer:*

*Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof, of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:*

*Provided further that the Central Government may prescribe specifications, conditions for approval, retrofitment and other related matters for such conversion kits:*

*Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose. ....”*

**5.3.** He would submit that alteration or variance in any motor vehicle is not permissible as per Section 52 of the MV Act, 1988. In support of his submissions, he has referred to and relied upon the decision of the Supreme Court in the case of ***Regional Transport Officer Vs. K. Jayachandra***<sup>1</sup> wherein it is held that alteration was not permissible under Section 52 of the MV Act, 1988. He would submit that in the event of alteration to a motor vehicle such as alteration in its chassis, consequences are set out in Sections 53, 54 and 55 of the MV Act, 1988 which would resultantly include cancellation of registration of the said vehicle.

**5.4.** He would submit that in the present case, 87 out of the 99 buses supplied to the Undertaking developed cracks in their chassis and thus the said buses were rendered unpliant within the first year itself. He would submit that some buses caught fire when being used

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<sup>1</sup> (2019) 3 SCC 722

resulting in them being rendered unusable. This was informed by the Undertaking to the Company vide notice dated 23.09.2015. In answer to the said notice, the Company in its reply dated 15.10.2015 offered fitment of reinforcement kit, which according to the Company would cover the cracks in the chassis, so that the buses could be reused.

**5.5.** He would submit that the Deputy Regional Transport Office, Solapur issued letter dated 13.10.2016 to the Corporation stating that since the buses developed cracks in its chassis within one year, there was every reason to believe that the cracks developed because of manufacturing defect. In that letter it was clarified that Section 52 of the MV Act, 1988 did not permit alteration to the chassis of the vehicle in any manner. It was also clarified that fitment of reinforcement kit to the cracked chassis was not permitted under Section 52 of the MV Act, 1988.

**5.6.** He would submit that by order dated 25.04.2017, the Registering Authority and the Deputy Regional Transport Officer, Solapur cancelled registration of the buses under Section 55(3) and 55(5) of the MV Act holding that the buses were not fit for daily use.

**5.7.** He has drawn my attention to a report dated 09.02.2017 issued by the Central Institute of Road Transport (CIRT) appended at page No. 173 of Writ Petition No.11827 of 2023. He would submit that the report was issued pursuant to inspection of reinforcement kit fitted

by the Company on 9 buses of the Undertaking as a test case. It is stated in the Report that CIRT inspected a bus with cracked chassis and without reinforcement kit, a bus without cracked chassis and with reinforcement kit and a bus with cracked chassis and with reinforcement kit and it was observed that the test report issued by Automotive Research Association of India on 02.02.2016 recommending fitting of reinforcement kit cannot be made applicable to buses with cracked chassis. It was stated therein that a defective chassis could only be replaced by a new chassis and no alteration was permissible. It is also stated therein that the fitment of reinforcement kit is detrimental to passenger safety.

**5.8.** He would submit that despite the above position, the Company in paragraph No. 35 of their Counter Claim averred that an offer of fitment of reinforcement kit was made out of good gesture, despite it being contrary to law and the Undertaking was expected to have accepted this offer despite it being evident that it would be dangerous for passengers' safety who travel in such buses. He would submit that the Company has maintained its stand of offering fitment of the reinforcement kit even before the learned District Court as well as this Court in its Affidavit-in-Reply, when it was contrary to law.

**5.9.** He has drawn my attention to paragraph No.23 of the Rejoinder to the Counter Claim filed by the Company before the

Arbitral Tribunal wherein there are specific pleadings taken pertaining to fitment of reinforcement kit which is relevant in this context.

Paragraph No.23 reads thus:-

*“23. With reference to paragraph 35 of the Reply, the Claimant states that although out of so called goodwill gesture the Respondent had offered to fit the reinforcement kit to the cracked chassis, the same was not acceptable to the Claimant as the Central Institute of Road Transport through its inspection report of reinforcement kit had observed that any defective chassis can only be replaced by identical new chassis but fitment of such reinforcement kit will be encouraging incorrect practices in the automobile manufacturing industry and the same can be detrimental to the safety of commuters. The Report of Central Institute of Road Transport (CIRT) is annexed as Annexure-65 to the Statement of Claim by the Claimant. Moreover, all the relevant authorities have held that no modification of chassis etc. is permissible after the sale of an automobile/bus. Thus, the so called reinforcement kit was contrary to all the laws and regulations governing motor vehicles in India. Moreover, the Claimant, in the circumstances, was correct to send the vehicles to Deputy RTO as the safety of the public is paramount and the buses needed to be in accordance with the requirements of the law.....”*

**5.10.** Reading the paragraph, he would submit that it is clear that specific contentions are raised in pleadings that fitment of reinforcement kit on the cracked chassis was contrary to all laws and regulations governing motor vehicles in India. Despite this, Company represented before the learned Arbitrator that if the Undertaking had accepted fitment of reinforcement kit on the cracked chassis offered by the Company, its losses would have been mitigated. He would submit that following this submission, without considering the submission that such fitment of reinforcement kit was not approved by the registering Authority as it was contrary to Section 52 of the MV Act, 1988, the

learned Arbitrator has passed the Award and the learned District Court has directed deposit of 50% of the amount in the interregnum as condition precedent to challenge the Award and for grant of interim relief. He would therefore submit that the Agreement and the Arbitral Award are accentuated by fraud in as much as the Company since inception had knowledge that fitment of reinforcement kit would be unlawful, but nonetheless it insisted and misrepresented that the same would be a viable option and persuaded the Undertaking to accept the same.

**5.11.** He has submitted a compilation of documents in support of his aforesaid submissions which mainly comprises of 4 Exhibits. Exhibit “A” is the copy of Statement of Claim filed by the Undertaking in the Arbitration proceedings; Exhibit “B” is the copy of Urban Bus Specifications – II; Exhibit “C” is the copy of of Bus Body Design and Approval – Automotive Industry Standards (AIS – 052) and Exhibit “D” is the copy of Rejoinder to the Counter Claim.

**5.12.** On the basis of the above, he would submit that the arbitration Agreement and the Arbitral Award are accentuated by fraud committed by the Company and in view thereof the Undertaking is entitled to an unconditional stay to the effect, operation, execution and implementation of the Arbitral Award dated 16.04.2019 as per second proviso to Sub-section (3) of Section 36 of the said Act. Hence he

would urge the Court to stay execution of the Award *sans* any condition and set aside the direction for deposit of 50% of the Award amount delineated by the District Court in its Exhibit “5” order.

**6.** *PER CONTRA*, Dr. Tulzapurkar, learned Senior Advocate appearing for the Company would submit that despite the learned District Judge in paragraph No.11 of the impugned order holding that if the operation and execution of the Award has to be stayed then Undertaking is required to furnish sufficient security to satisfy the ultimate decree, it has erroneously directed the Undertaking to furnish security to the extent of 50% of the Award amount, which does not satisfy the ultimate Award.

**6.1.** He would submit that the buses were rendered non-pliable and their fitness certificates were revoked / cancelled not because of any defect or substandard manufacturing quality but on account of willful improper usage and non-maintenance of the buses by the Undertaking. He would submit that buses supplied to the Undertaking by the Company were semi-low floor buses having floor clearance height of 650 mm. He would submit that such buses are designed and intended to be used on smooth urban road surfaces, unlike the regular high floor clearance buses having ground clearance height of 900 mm which are designed to better withstand poor road conditions. He would submit that the Undertaking however chose to deploy the semi-low

floor 650 mm buses on rural roads where the road surface was uneven, broken and even non-existent in several places, being the root cause of breakdown of the buses.

**6.2.** He would submit that at the same time, Company supplied 35 midi non-AC buses having floor clearance height of 900 mm which are plying without any issues. He would submit that when the first batch of buses developed some problem, the Company promptly attended to them and upon inspection discovered road hitting marks on the underside of the chassis of the said buses. He would submit that the Company conducted physical road survey and had written to the Undertaking stating that the semi-low floor buses having 650 mm floor clearance height should not be plied on specific routes identified by the Company due to bad road conditions. He would submit that the Company offered to repair the cracked chassis of the initial lot of buses by suggesting fitting of reinforcement kit and also agreed to fit reinforcement kit on the remaining buses as a preventive measure at its own cost. He would submit that the Undertaking not only refused to allow the Company to apply the reinforcement kit but continued to ply the buses on routes having bad road conditions and which were specifically identified by the Company as being unsuitable and the real cause for cracks / damage to their chassis.



**6.3.** He would submit that the Undertaking, deliberately, with *malafide* intention proceeded to encash the Performance Bank Guarantee, even after it knew that the Company had approached the Arbitral Tribunal for seeking urgent interim relief from preventing it from encashment of the Performance Bank Guarantee. He would submit that though the Undertaking complied with the order dated 15.04.2017 passed by the learned Arbitrator directing it to deposit the amount received from encashing the Performance Bank Guarantees in a Fixed Deposit Account, it initially failed to comply with the Arbitral Award passed by the learned Arbitrator which directed it to liquidate the Fixed Deposit Account and pay over the monies with accrued interest to the Company. However, in fairness, he would inform the Court that the said direction now stands complied with by the Undertaking pursuant to passing of order dated 13.09.2023 by this Court.

**6.4.** He would draw my attention to the decision of the Supreme Court in the case of *Pam Developers Pvt. Ltd. Vs. State of West Bengal*<sup>2</sup> wherein the Supreme Court has clearly laid down that where the Judgment Debtor under an Arbitral Award is a State Government, even though the provisions of Order XXVII Rule 8-A of the Code of Civil Procedure, 1908 (for short “CPC”) may exempt it from the mandatory obligation of furnishing security in terms of Order XL Rule 1(3) for

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<sup>2</sup> (2019) 8 SCC 112

seeking stay of execution of a monetary decree under Order XLI Rules 5(3), 5(5) and 6, the State Government is not exempted from the requirement of depositing the decretal amount as a condition for stay of execution of the decree/ Award. He would submit that in the said decision it is further held that even though under the CPC certain provisions allow differential treatment to the Government, that is not the case under the said Act. He would submit that Section 36 of the said Act does not provide for any special treatment to the Government in so far as execution of award or stay of execution pending the challenge under Section 34 is concerned. He would submit that in this context, the Supreme Court in the facts of that case directed deposit of 100% of the awarded amount while granting stay of execution.

**6.5.** He would submit that in any event, in the present case, the Undertaking is not a State or Central Government and therefore even the limited benefit of Order XXVII Rule 8-A of the CPC is not available to the Undertaking. He would submit that this has been clearly laid down by the Supreme Court in its decision in the case of *Kanpur Jal Sansthan Vs. Bapu Construction*<sup>3</sup> wherein it was held that the term 'Government' as defined under Rule 8B and used in Rule 8A of Order XXVII of the CPC means only the Central or State Government in exclusivity and not any body, or Corporation or instrumentality or agency of the state or a statutory body. He would submit that the

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<sup>3</sup> (2015) 5 SCC 267

Solapur Municipal Corporation and/or the Undertaking are not covered within the meaning of Order XXVII Rule 8A and therefore not exempt from furnishing the statutory security. He would submit that on the other hand, the Undertaking is liable under the provisions of Order XLI Rules 1, 5 and 6 of the CPC to furnish security and deposit the Award amount as a precondition for grant of stay of execution of the Award against itself or against the Solapur Municipal Corporation.

**6.6.** He would submit that various other facts, viz; that the Undertaking is a government undertaking and a local body responsible for providing transport services in Solapur City / District and is responsible for safety of passengers, that huge public money is involved, etc. are matters that are irrelevant to the adjudication of the stay application filed by the Undertaking. He would submit that if the buses could not be used for their intended purpose allegedly leading to financial losses, the fault for the same lies squarely with the Undertaking for not using the buses in accordance with their intended purpose and design and for not maintaining them in accordance with the instructions of the OEM and the Company cannot be blamed for the same.

**6.7.** He would submit that the question of who was responsible for the damaged state of the buses was the central issue before the learned Arbitrator who, after looking into the evidence led by both

parties, eventually concluded that it was the Undertaking and not the Company who was responsible for the same. He would submit that it is not permissible for the Undertaking to raise the said issue before the learned District Court hearing the stay application when infact the Undertaking has not pleaded such an issue in its stay application filed before the learned District Court under Exhibit “5”.

**6.8.** He would submit that the Undertaking's reliance on the second proviso to Section 36 of the said Act under which the Court can grant unconditional stay to execution of the impugned Award if the party makes out a *prima facie* case that the agreement/ contract on the basis of which the Arbitration Award was passed was induced or effected by fraud or corruption is completely misplaced in the facts of this case. He would submit that Undertaking's allegation that the Company committed fraud in performance of the contract amounts to state that it committed breach of the contract. Such a stance is different from the allegation that the contract itself was entered into by virtue of committing a fraud on the Undertaking or that there was corruption involved in the process of entering into the contract or of the making of the Award. It is only this later nature of allegation that is covered by the second proviso to Section 36 of the said Act and not the case made out by the Undertaking on the ground of damage caused to the buses rendering them unliable.

**6.9.** He would submit that as per Section 36 (3) of the said Act, it is mandatory for the Court to record reasons in writing if any stay is granted on the Arbitral Award, however in the present case, no reasons whatsoever have been recorded for granting stay of execution of Award with 50% deposit of decretal amount instead of the 100% deposit of the same. He has drawn my attention to the first proviso of Section 36(3) of the said Act which mandates the Court to have due regard to the provision for grant of stay of a money decree and would submit that the impugned order has not considered the relevant provision.

**6.10.** He would submit that from a bare reading of the Undertaking's own case, it is clear that there is no allegation that the contract was entered into by fraud or corruption or that the making of the Award was induced or affected by fraud or corruption. The Company was one of the participant company in the tender process floated by the Undertaking whose bid was accepted, declared successful and it was awarded the contract. He would submit that the Undertaking does not allege any wrongdoing/ fraud/ corruption in this process neither are any particulars provided in support of such allegation. The contention however raised is that after having secured the contract, the Company "fraudulently supplied defective and unusable buses with full knowledge of the same and also the fact that use of such buses would pose grave threat to the public life at large

and cause tremendous loss to the public exchequer". He would submit that the aforesaid allegation raised after using the buses is nothing but another way of stating that the Company committed breach of contract which is the case with which the Undertaking defended the arbitration proceeding and which has been comprehensively rejected in the Arbitral Award. He would further submit that there is no allegation that arbitration process was in any way affected by fraud or corruption and neither there are any particulars provided in support of such an allegation. Therefore he would submit that the second proviso to Section 36 of the said Act has no application in the present case and the Undertaking is not entitled to an unconditional stay as contended.

**6.11.** He would submit that for the benefit of the Undertaking, the Company specifically identified the routes in rural areas in Solapur district were to be particularly avoided considering the bad road conditions. He would submit that the Urban Bus Specifications-II (UBS-II) which were standardized specifications issued by the Ministry of Urban Development, Government of India in March 2012 under which the Undertaking issued the present tender were explicitly applicable to buses for urban operations which defines vehicle intended for operations within the confines of a city or a metropolitan area. He would submit that despite applicability of the aforesaid, the Undertaking chose to operate the 650 mm semi-low floor buses in rural areas of Solapur district having bad road conditions eventually leading

to their breaking down, the evidence in support of which has been adequately considered by the learned Arbitrator while passing the Arbitral Award.

**6.12.** He would submit that law does not allow the Undertaking to agitate the same issues by a reappraisal of the evidence. He would submit that all relevant documents and contentions have been placed on record in the arbitration proceedings culminating in the Award in the light of their relevance and evidentiary value.

**6.13.** He would submit that the question of fact as to whether the 650 mm semi-low floor buses supplied by the Company were or were not in accordance with the requisite standards, both contractual and statutory, was in the exclusive domain of the learned Arbitrator who has after considering all relevant evidence has held that there was no manufacturing or design defect in the buses supplied by the Company and in any event, the buses supplied by the Company were in compliance with UBS-II Specifications and the Code of Practice for Bus Body Design and Approval, 2008. He would submit that the allegation by the Undertaking that the prescribed life cycle of 12 years or 10,00,000 km (whichever is earlier) was not met by the Company since the buses developed cracks within a year of its usage is completely misplaced as the prescribed life cycle mentioned above is applicable only when buses are used in accordance with their intended

usage for which they are designed and also when the buses are maintained properly and regularly in accordance with the instructions of the OEM.

**6.14.** He would submit that the issue of fitment of reinforcement kit was relevant only to the question of whether the losses allegedly suffered by the Undertaking on account of being unable to ply the damaged buses, which were damaged by their own action could have been mitigated if fitment of the reinforcement kit to the chassis was accepted by the Undertaking and that question has now become redundant, once the learned Arbitrator has concluded Issue No.1 that the Undertaking had not proved that there was any manufacturing or design defect in the buses. Hence he would submit that the subsequent question of measure of damages to which the Undertaking would have been entitled to and the question of mitigation of loss suffered by it would have become relevant only if the Undertaking in the first place would have succeeded in establishing liability of the Company. He would submit that both parties led evidence of their respective expert witnesses to prove their respective case and the Award has considered and analysed the entire evidence and returned a finding of fact that there was no manufacturing or designing defect in the buses which were supplied by the Company and hence he would submit that this Court should not attempt to re-evaluate and re-appreciate the evidence.



**6.15.** He would submit that the learned District Judge did not appreciate the fact that the Undertaking repeatedly attempted to delay the arbitration proceedings and hearing of the Exhibit “5” Application filed by them was another attempt to protract and delay deposit and / or payment of the Award amount to the Company. In this regard, he has drawn my attention to the decision of the Supreme Court in the case of *Rahul S. Shah Vs. Jinendra Kumar Gandhi and Ors.*<sup>4</sup> which has also been followed in the case of *Bhoj Raj Garg Vs. Goyal Education and Welfare Society and Ors.*<sup>5</sup> subsequently wherein it is held that execution proceedings are to be heard within a period of 6 months failing which the Executing Court has to record reasons in writing. He would submit that despite that being the settled position, the Execution Application has remained pending for more than 4 years and therefore urge the Court that the pre-condition for stay of the Arbitral Award ought to have been 100% deposit of the Award amount in place of 50% deposit as directed by the impugned order.

**6.16.** In support of his contentions and submissions, he has also relied on the decisions of the Supreme Court and this Court in the following cases:-

- (i) *Garment Craft Vs. Prakash Chand Goel*<sup>6</sup>;
- (ii) *State Bank of India and Anr. Vs. K.S. Vishwanath*<sup>7</sup>;

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4 (2021) 6 SCC 418

5 Special Leave to Appeal No.19654 of 2022

6 (2022) 4 SCC 181

7 (2022) 15 SCC 190

- (iii) *Sepco Electric Power Construction Corporation Vs. Power Mech Projects Ltd.*<sup>8</sup>;
- (iv) *Malwa Strips Private Limited Vs. Jyoti Limited*<sup>9</sup>;
- (v) *Balmer Lawrie & Co. Ltd. Vs. Shilpi Engineering Pvt. Ltd.*<sup>10</sup>; and
- (vi) *ITD Cementation India Limited Vs. Urmi Trenchless Technology Private Limited*<sup>11</sup>.

**6.17.** He would contend that before the Executing Court, the Corporation has gone to the extent of denying that the Undertaking is an integral part of the Corporation. He would submit that it is the Undertaking's own case in its Statement of Claim filed before the learned Arbitrator as well as in the Application filed under Section 34 of the said Act that the Undertaking is an Urban Local Body incorporated under the MMC Act and it is responsible for providing public transportation to the residents of Solapur and its adjoining area and since it is a part of the Corporation various correspondence is exchanged between the Company and the Corporation. He would submit that the Undertaking has attempted to take such stand despite the fact that the Commissioner of the Corporation has himself on various occasions addressed letters which are a clear admission of the fact that it was a party to the Arbitration proceeding and is a Judgment Debtor which can be gathered on reading letters at Exhibits "D" and "E" to Writ Petition No.6147 of 2024.

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8 2022 SCC OnLine SC 1243

9 (2009) 2 SCC 426

10 2024 SCC OnLine Bom 758

11 2020 SCC OnLine Bom 10611

**6.18.** He would submit that the Company has filed Writ Petition No.155 of 2023 to challenge the orders dated 24.11.2022 and 29.11.2022 passed by the Principal District Judge on Application filed by the Commissioner of the Corporation which is also pending before the Division Bench of this Court.

**6.19.** He would submit that the Corporation filed Application under Section 47 of the CPC before the Executing Court claiming that it was not a party to the Arbitration proceeding and no Award is passed against the Corporation and hence the Execution proceedings initiated against the Corporation be dropped. He would submit that this Application stands rejected by the Court by order dated 16.12.2023. He would submit that the said order is also challenged by the Corporation in Writ Petition No.3833 of 2024.

**6.20.** In view of the above submissions, he would urge the Court to consider the facts and circumstances of the present case with the well settled position of law and modify the impugned order dated 27.06.2023 to the extent of directing the Undertaking to deposit the entire 100% of the Award amount instead of 50% as directed in the said order.

**7.** Ms. Shastri, learned Advocate appearing on behalf of the Corporation has at the outset, on merits adopted the submissions and arguments advanced by Mr. Killedar. Additionally, she would draw my

attention to the Affidavit-in-reply dated 26.04.2024 filed by Ms. Jyoti Sureshrao Bhagat, Assistant Municipal Commissioner of the Corporation and would submit that the Corporation was never a party to the Arbitration proceedings nor was a party to the Civil Miscellaneous Application No.160 of 2019. Hence she would submit that the Writ Petition filed by the Company qua the Corporation be dismissed. She would submit that the Corporation was impleaded as a party to the proceedings for the first time only in Execution proceedings by the Company.

**7.1.** Hence she would submit that Corporation filed Application below Exhibit “27” before the Executing Court seeking dismissal of Execution proceedings qua the Corporation. However by order dated 16.12.2023, the Executing Court dismissed the Application filed by the Corporation and the said order is separately challenged by the Corporation in this Court in Writ Petition No.383 of 2024.

**7.2.** She would submit that nothing prevented the Company from impleading the Corporation at the inception stage in its pleadings / Counter Claim filed before the learned Arbitrator as the same would have given the Corporation an opportunity to defend its right before the learned Arbitrator.

**7.3.** She would submit that Writ Petition qua the Corporation is therefore clearly not maintainable as the Corporation was never made

a party to the Arbitration proceeding. She would submit that it is clear that a decree as per Section 2(2) of the CPC conclusively determines the rights of parties with regard to all or any of the matters in controversy, in the Suit and therefore in the present case the Arbitral Award which is against the Undertaking cannot be executed against the Corporation.

**7.4.** She would submit that the Corporation is an entirely different legal entity within the meaning and scheme of the Maharashtra Municipal Corporation Act, 1949 (for short “**MMC Act**”) and it is headed by the Municipal Commissioner. She would submit that the Transport Undertaking is however an Undertaking constituted under Section 341 of the MMC Act.

**7.5.** She would submit that Section 75 of the MMC Act leaves no doubt that for contracts relating to Transport Undertakings, the provisions of Section 73 and Chapter V of the MMC Act shall apply as if the words "Transport Manager" and "Transport Committee" had been substituted for the words "Commissioner" and "Standing Committee" respectively. She would submit that this goes to show the de-linking of the Undertaking from the Municipal Corporation and on this ground itself the dues of the Undertaking cannot be recovered from the Corporation. She would submit that the legislature has consciously compartmentalized the powers, functions of the Corporation and the

Transport Undertaking separately and if it is held that the Transport Undertaking was an extended arm of the Municipal Corporation then it would render the aforesaid provisions of the MMC Act completely otiose.

**7.6.** She would submit that Section 357(d) of the MMC Act provides for payment of salaries and allowances of all municipal officers and servants appointed under the provisions of that Chapter. Therefore according to her, the salaries of all officers and servants appointed for the purpose of the Undertaking are to be paid from out of the Transport Fund only. She would submit that the Chapter pertaining to the Transport Undertaking is a self contained code in itself as regards the functions and purpose of the Transport Undertaking including the application of funds for operation and functioning of the Transport Undertaking and this shows that the Transport Undertaking and the Municipal Corporation are two distinct separate legal entities and the Undertaking is not an extended arm of the Corporation. Therefore she would submit that in the present case, the Corporation cannot be saddled with the liability of the Undertaking.

**7.7.** She has drawn my attention to the provisions of Section 357(e) of the MMC Act and would submit that the said Section provides that the Transport fund is to be used for the payment of all

expenses and costs incurred by the Transport Manager in the exercise of any power or the discharge of any duty conferred or imposed upon him for the purposes of, or in connection with the Transport Undertaking under the provisions of the Act or of any other enactment, including monies which he is required or empowered to pay by way of compensation. According to her, this makes it abundantly clear that the Transport Fund alone is to be used for payment of any compensation arising out of the functioning of the Undertaking. She would submit that Section 357(1) of the MMC Act states that monies credited to the Transport Fund shall be applied in payment of all sums, charges, costs including payment of every sum payable under a decree or order of a Civil or Criminal Court. She would submit that this provision clarifies that if a decree is suffered by the Transport Undertaking which is required to be satisfied, the funds from the Transport Fund are to be used towards satisfaction of that decree and therefore the Transport Fund has been set up for the purposes as set out hereinabove and is separate and distinct from the Fund which is maintained for the Corporation, i.e. the Municipal Fund, as contemplated under Section 82 of the MMC Act.

**7.8.** Next, she would submit that Section 88 (h)(ii) of the MMC Act provides that the money from the Municipal Fund is to be applied for payment of any money due under a decree or order of a Civil or Criminal Court passed against the "Corporation or against the

Commissioner, Deputy Commissioner or Assistant Commissioner ex-officio". She would submit that a conjoint reading of Section 88(h)(ii) with Section 357(f) of the Act makes it evident that the purpose of the Municipal Fund is to satisfy decrees passed against the Corporation, whereas the Transport Fund is to be used for satisfying decrees passed against the Transport Undertaking.

**7.9.** She would submit that a bare perusal of Sub-section (2) of Section 481 of MMC Act indicates that in respect of any legal proceeding arising out of acquisition, extension, administration, operation and maintenance of the Transport Undertaking, the words "Transport Manager" and "Transport Committee" are to be used in place of "Commissioner" and "Standing Committee".

**7.10.** She would therefore submit that, it is clear that the legislature has clearly made a distinction between the Commissioner and the Transport Manager as far as the operations, etc. of the Transport Undertaking is concerned and the Corporation and the Transport Undertaking are two separate and distinct legal entities and the Undertaking is not an extended arm of the Corporation as far as institution of civil and criminal action is concerned. She would submit that the Transport Undertaking is capable of being sued in its own capacity, whenever there are any legal proceedings arising out of acquisition, extension, administration, operation and maintenance of



the Transport Undertaking and hence in the present case, the Corporation is not a proper and necessary party to the Execution proceedings as it is clear that the Transport Undertaking is independent of the Corporation.

**7.11.** She would submit that the Transport Undertaking and the Corporation are both statutory entities with objects and purposes which are defined by the Statute under which they are created. They are both "State" and "Instrumentalities of State" and it cannot be said that the Undertaking is a facade or a device set up for concealment, and therefore the corporate veil cannot be lifted in the present case to affix liability of the Undertaking on the Corporation.

**7.12.** She would submit that holding the Corporation liable for liability incurred by the Undertaking will result in grave and chaotic civil consequences of far reaching purport whereby by necessary implication, it shall mean that the employees and personnel of the Undertaking will be considered and deemed to be employees, personnel, etc. of the Corporation, and this would be completely contrary to the scheme of the MMC Act. She would submit that it would further render Section 357(d) of the MMC Act nugatory which provides for payment of salaries and allowances of all municipal officers and servants appointed under the provisions of that Chapter.

**7.13.** She would submit that if it is held that the Corporation is an extended arm of the Undertaking, then the *inter se* seniority, promotion, pay-scale, etc. of the employees, personnel of the Corporation and that serving in the Transport Undertaking would be affected thereby creating serious consequences in the functioning of the Municipal Corporation. She would submit that Arbitration is essentially a creature of contract between the parties and the proceedings bind the parties to the contract and third parties to the contract cannot be joined in the Arbitration at the execution stage. She would submit that the dispute between the Company and the Undertaking is purely commercial in nature and the Corporation cannot be impleaded as party at the execution stage or in the present Writ Petition when it was admittedly not a party before the Arbitral Tribunal and the Award and order is also not directed against the Corporation.

**7.14.** On the basis of the above submissions, she would urge the Court to dismiss Writ Petition No.6147 of 2024 *qua* the Corporation.

**8.** I have heard Mr. Killedar, learned Advocate for the Undertaking, Dr. Tulzapurkar, learned Senior Advocate for the Company and Ms. Shastri, learned Advocate for the Corporation and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates has received due

consideration of the Court.

**9.** It is seen that Petitioner - Undertaking has approached this Court to challenge the interim order dated 27.06.2020 passed by the District Judge, Solapur in Application below Exhibit "5" in CMA No.160 of 2019. The principal proceedings CMA No.160 of 2019 is filed for challenging the Arbitral Tribunal's Award dated 16.04.2019 passed in Arbitration Case No.01 of 2017. Challenge is maintained before the District Judge under Section 34 of the said Act. Exhibit "5" Application is filed on 20.07.2019 seeking relief of stay to the impugned order therein. The Exhibit "5" order stays the execution and implementation of the Award, subject to deposit payment of 50 % of amount of Award within one month.

**10.** In the present case, it is seen that 87 out of the 99 buses which are supplied by the Company to the Undertaking developed cracks in their chassis within the warranty/ condition period itself. This is an admitted position. The warranty period is of 2 years or upto 2 lakh kilometers of running, however within one year, the chassis cracks were developed. That apart, there were other defects also. Case of the Undertaking is that cracks developed due to manufacturing defects whereas it is countered by the Company that there is no manufacturing defect whatsoever and the cracks developed due to bad road conditions on which the buses were plied. The pleadings of the parties

which have been placed before me and which also have been placed before the Tribunal leading to passing of the Award pertain to the acquisition of tender by the Company, application of the Ministry of Urban Development (MoUD), Urban Bus Specifications, 2008 (UBS), application of Jawaharlal Nehru National Urban Renewal Mission, 2005 (JnNURM), Urban Bus Specifications - II (UBS - II), National Urban Transport Policy (NUTP), BS - IV Norms under JnNURM Scheme Guidelines for extending additional central assistance under JnNURM, the correspondence between parties due to the above dispute, Report from Automative Research Association of India (ARAI), Deputy RTO's Report on the subject buses, Technical Committee Report dated 12.08.2016 forwarded to the Deputy RTO, Central Institute of Road Transport (CIRT) Report and other pleadings in the form of witness action. Learned Advocates have vehemently argued on the applicability and interpretation of the above pleadings and the witness action on them.

**11.** The Arbitrator in the Award has framed 14 issues, out of which 12 required adjudication. It is seen that argument of the Undertaking that the Company was required to have the knowledge about the condition of the roads of Solapur where the buses were to be plied and accordingly they should have manufactured the said buses stands rejected by the Tribunal. It is seen that this particular finding goes to the root of the matter as it touches upon interpretation and

conclusion of the aforementioned pleadings upon which witness action is led by both the parties. Both parties have relied upon substantial evidence in support of their respective case. On the above issue, the Tribunal has not found favour with the Undertaking's case. Counter - argument of the Company is that if the Undertaking was aware about the bad condition of Solapur roads, then it should not have ordered low floor height buses in the first instance. This issue is on the merits of the matter.

**12.** Another issue which has been widely debated and decided by the Tribunal pertains to making and availability of the reinforcement kit by the Company to the Undertaking and whether the Undertaking's losses would have been mitigated if the reinforcement kit were fixed to the damaged chassis of all buses whether cracked or not. Here it is seen that, the Undertaking could not accept this offer due to logistical and legal reasons because it was impermissible under the law as pleaded. Appropriate evidence has been led by the Undertaking on this aspect to place on record the substantial reasons for not accepting the reinforcement kit to be fitted on the damaged buses as it would have violated the law and rendered the registration of the buses cancelled.

**13.** That apart, the issue of termination of contract by the Undertaking is also debated by the parties and decided in the Award leading to the direction to pay the withheld amount by the

Undertaking. The findings returned on issue No.1 is the principal dispute between the parties. It is answered in the negative against the Undertaking while considering the cumulative effect of the substantive evidence of witnesses of the Undertaking and the evidence led by the Company.

**14.** The ground of challenge to the extent of seeking a stay in the Exhibit "5" Application according to the Undertaking are the clear legal impediments which were faced by the Undertaking. The Undertaking has relied upon Section 52 of the MV Act and argued that alteration or variance in any motor vehicle is not permissible and has relied upon the decision of the Supreme Court in the case of *Regional Transport Officer Vs. K. Jayachandra* (1st *supra*) which categorically holds that alteration in the chassis of a vehicle is impermissible in view of Section 52 of the MV Act. Undertaking would rely on the consequences set out in Sections 53, 54 and 55 of the MV Act to state that if such an alteration is done which would result in cancellation of registration of the vehicle. This is precisely the reason why the reinforcement kit even though tried and tested had to be rejected by the Undertaking. Much emphasis is laid on the issue of manufacture of the buses qua the technical conditions, environmental conditions, government specifications and most importantly the contract between the parties. The Company laid emphasis of urban operation of the buses to mean that the vehicles were intended for operation within the

confines of a city or a greater metropolitan area and has argued that the subject buses were operated on rural and pot holes ridden roads with loose stones and on roads which were not surfaced or maintained which has found favour with the Tribunal. This is however challenged.

**15.** The bone of contention in the present case is the floor height of the subject buses. Substantial witness action has also been undertaken on the above issue. The argument and submissions of the Company that it was a bad choice of the Undertaking to order low floor height buses has found favour in the Tribunal's Award. While answering issue No.1 which is the principal issue, it is seen that the Tribunal has on the basis of evidence of claimant's witness No.3 come to a conclusion that since he has not given any opinion as an expert witness on the cause of the cracks to the chassis of the subject buses, it is of no assistance to the Undertaking's case that the cracks on the chassis of the Jan buses occurred because of the any manufacturing / design defect. *Prima facie*, on the basis of mere numbers, this aforesaid finding appears to be incoherent in my opinion for the following reason.

**16.** All 99 Jan buses developed the cracks in their chassis rendering them unpliant in one go. Initially within a period of 1 year, 87 out of 99 buses developed cracks and subsequently all of them developed cracks. If all buses developed the cracks then it could

possibly be only due to manufacturing defect and nothing more. This is my *prima facie* opinion. The argument of the Company that buses were plying on the rural roads which were not maintained and surfaced and has loose stones cannot be accepted at all for determining issue No.1 *prima facie* due to the fact that it is an incorrect argument and proposition which is made generally. If such an argument is to be countenanced, every detail of the roads which fall into the aforesaid category *qua* all buses ought to have been placed on record *qua* the contract in questions to ascertain if such an argument can be acceptable. That is not the case here. There is no categorisation like rural roads. Buses were plying in and around Solapur. Solapur is a city having good roads and therefore the above argument which has been accepted by the Tribunal to determine Issue No.1 requires consideration in the challenge to the Award.

**17.** In view of my above *prima facie* observations and findings after going through the record of the case and delineating the submissions made by learned Advocates for parties in the attending facts of the present case, I am of the opinion that challenge maintained to the Award deserves to be decided in accordance with law. Considering the provisions of Section 34 of the said Act read with provisions of Order XLI Rule 5 of CPC, it would be appropriate to permit the Undertaking to deposit 25% of the principal sum in the Award under challenge before the District Court and pass appropriate



directions for disposal of CMA No.160 of 2019 expeditiously.

**18.** This is in view of the fact that provisions of Order XLI Rule 5 of CPC state that the Appellate Court may for sufficient cause order stay of execution. Though the said provision states that, “*an appeal shall not operate as a stay of proceedings under a decree nor or order appealed from except so far as the Appellate Court may order, nor shall execution of decree be stayed by reason only of an sufficient cause order stay of execution of such decree,*” the words ‘shall’ and ‘may’ appearing in the above provision have been duly interpreted to be directory and not mandatory as held by the Supreme Court in the case of *Malwa Strips Private Limited* (9<sup>th</sup> *supra*) in paragraph Nos.8 and 9 of the said decision which read as under:-

*“8. Parliament, by reason of Section 87 of Act 104 of 1976 inserted sub-rule (3) in Rule 1 of Order 41 of the Code, which is to be in the following effect:*

*“1. (3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the appellate court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the court may think fit.”*

*An explanation was also added to sub-rule (1) of Rule 5 of Order 41. In terms of sub-rule (1) of Rule 5 of Order 41, an appeal shall not operate as a stay of proceedings. It is for the appellate court who may, for sufficient cause, order stay of execution of such decree. The Explanation appended to the said sub-rule reads as under:*

*“Explanation.—An order by the appellate court for the stay of execution of the decree shall be effective from the date of the communication of such order to the court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the*

*appellate court shall, pending the receipt from the appellate court of the order for the stay of execution or any order to the contrary, be acted upon by the court of first instance.”*

*9. In terms of sub-rule (5) of Rule 5 of Order 41, the court shall not make an order staying the execution of the decree notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1. We will proceed on the assumption that although the word “shall” has been used in Order 41 Rule 1(3) of the Code, the same is not mandatory in character, and, thus, may be read as directory.”*

**19.** Hence, I pass the following order:-

- (i) The Arbitral Award dated 16.04.2019 shall stand stayed for a further period of six (6) months from the today as I propose to pass directions to the learned District Judge seized of CMA No.160 of 2019 to dispose of the said proceedings within that period but subject to further directions herein;
- (ii) The impugned order dated 27.06.2023 is modified to the extent of directing the Undertaking to deposit the amount of Rs.6,16,04,648/- (Rupees Six Crore Sixteen Lakh Four Thousand Six Hundred and Forty-eight only) as security before the District Court, Solapur to show its bonafides within a period of eight (8) weeks from today;

- (iii) Learned District Judge / Court shall determine CMA No.160/2019 as expeditiously as possible and in any event within a period of six (6) months from today;
- (iv) The deposit by the Undertaking as directed herein above in clause (ii) shall be subject to the final decision in CMA No.160 of 2019;
- (v) The Execution proceeding filed by the Company shall stand stayed for a further period of six (6) months from today; and
- (vi) All contentions of parties before the District Court in CMA No.160 of 2019 are expressly kept open.

**20.** Writ Petition No.11827 of 2023 is allowed in the above terms.

**21.** Resultantly, in view of the above judgment, Writ Petition No.6147 of 2024 is dismissed.

[ MILIND N. JADHAV, J. ]

**22.** After the judgment is pronounced, Mr. Purandare, learned Advocate for the Company would inform the Court that in the event if Undertaking fails to deposit the amount within a period of eight weeks, the execution proceedings should be allowed to be continued.

**23.** Mr. Purandare's submission with respect to the above issue appears to be correct in that regard. In the event if deposit of amount is not made within a period of eight weeks, the Company shall be entitled to continue with the execution proceedings.

[ MILIND N. JADHAV, J. ]

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