



2025 INSC 283

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(arising out of SLP(C) No. 25334/2024)

NATIONAL HIGHWAYS AUTHORITY OF
INDIA

..... APPELLANT(S)

VERSUS

M/S IRB AHMEDABAD VADODARA SUPER
EXPRESS TOLLWAYS PVT. LTD.

..... RESPONDENT(S)

O R D E R

Leave granted.

Three issues stood decided by the impugned judgment dated 18.10.2024. The first issue pertains to the applicability of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908¹, in the facts and circumstances of the present case. On the said issue/aspect, we do not find any good ground and reason to interfere with the impugned judgment. However, we clarify that, in case there is any change in the facts and circumstances, it would be open to the appellant, National Highways Authority of India², to move a fresh application and satisfy the Court that the conditions mentioned in Order XXXVIII Rule 5 CPC are fulfilled.

We further clarify that the decision on the first issue/aspect shall not have any bearing on the execution

¹ For short, "CPC."

² For short, "NHAI."

proceedings, stated to have been filed by the appellant, NHAII.

The second and the third issues/aspects decided in the impugned judgment, from paragraphs 28.1.7 to 28.1.9 and 28.2.1 to 28.3 respectively, will be treated as erased and the directions/observations made there are set aside. This is being done in view of the statement made by the learned Senior Advocate appearing for the respondent, M/s. IRB Ahmedabad Vadodara Super Express Tollways Pvt. Ltd. We must record that a similar statement is also made by the learned Senior Advocate appearing for IRB Infrastructure Developers Limited.

It is clarified that the direction to erase the aforesaid paragraphs or the observations and findings recorded therein shall not be treated as an expression of opinion by this Court on the merit of the rival pleas and contentions of the parties, which may be raised before the appropriate forum.

Recording the aforesaid, the appeal is disposed of.

Pending application(s), if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
FEBRUARY 24, 2025.