

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.32 OF 2015
IN
ARBITRATION APPEAL NO.10 OF 2015

Mr. Nitin Keshav Bhosale Applicant

In the matter between

Manmohan Anand & Ors. Appellants

Vs.

1 Mr.Nitin Keshav Bhosale Respondent/
Award holder

2 Bharat Krishna Dimbale Respondent/
Arbitrator.

Mr. Milind Sathaye, Advocate for the applicants.

Mr. Abhishek Pungliya, Advocate for original appellants in Arbitration Appeal No.10 of 2015 and for respondents no.1 to 3 in Civil Application.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 30th October, 2015

P.C. :

1 This Civil Application is taken out by the original respondents for liberty to withdraw the amount of

Rs.42,35,694/- deposited by the appellants in the District Court, Pune pursuant to the order dtd.24th April, 2015 as condition for stay of the arbitral award in the sum of Rs.1,42,35,694/-. Perusal of the arbitral award shows that the total amount under the award has been divided into two parts i.e. Rs.1.00 Crore towards the damages claimed by the respondents and Rs.42,35,694/- towards the actual loss suffered by the respondent. The petitioner had earlier challenged the award by filing application under Section 34 of the Arbitration and Conciliation Act. That application being rejected, the petitioner has approached this court under Section 37 of the Arbitration and Conciliation Act.

2 Mr. Pungliya, the learned advocate for the appellant opposes the Civil Application contending that the award is unsustainable on various grounds and two of the major grounds are that the Arbitrator was biased and he did not consider the allegation of the appellant that the agreement in question was got executed by the respondent, by playing fraud. He submits that the Arbitrator did not decide this main contention of the appellant by stating reason that the appellant has already filed a suit to challenge the agreement. Mr. Pungliya submits that on the Civil Revision Application preferred by the respondent himself, proceedings of the suit are stayed. The revision application preferred by the respondent was on the ground that the Civil Court had erred in exercising jurisdiction to entertain

the suit in the face of the clause for arbitration contained in the agreement. The order staying the suit granted specifically liberty to the parties to resort to other remedies. Accordingly the parties resorted to the remedy of the arbitration, the award passed under which has reached this court by way of an appeal under Section 37 of the Arbitration Act.

3 Perusal of the award shows that the Arbitrator has given a clear finding as regards the actual expenses incurred by the respondent as of Rs.42,35,694/-. In view of that finding, this court while granting interim stay of execution of the award had directed the appellant to deposit the amount. Mr. Pungliya refers to the document of insurance to submit that as per the document, the only expenses incurred by the respondent were of Rs.13,24,000/- and not Rs.42,35,694/-. He submits that the appellant had infact invested a sum of Rs.47,77,500/-, for various articles, which were insured under the insurance policy. The list of articles of the appellant insured under the insurance policy, essentially are for the interior decoration of the premises including the furniture, vectrified tiles used, glass doors with etching moulded glass etc. The other articles include deep freezer, refrigerator, water cooling machine fitted with Kirloskar compressor, fire fighting instruments, fire extinguisher etc. whereas the investment of the respondent was towards cutlery, utensils, uniforms, stationery etc.

4 Mr. Sathaye, the learned counsel for the applicants states that the cost of investment mentioned in the insurance policy should not be accepted as the extent of investment by the respondent because the same would be relevant and variable to the premium for the insurance payable by the parties. He stated that the entire premium of the insurance has been paid by the respondent.

5 Considering the finding given in the award and the fact that the amount deposited is of the actual expenses incurred by the respondent, there can be no difficulty in allowing the respondent to withdraw the amount provided, on the respondent undertaking to this court that he will bring back the amount in the event the appellant succeeds in the appeal. The respondent has annexed copy of the solvency certificate to the application. He shall file the original solvency certificate along with the undertaking in writing in the court, as a condition to withdraw the amount. On these conditions, the Civil Application is allowed.

(Smt. R.P. SondurBaldota, J.)