

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CIVIL APPLICATION NO.47 OF 2013
IN
ARBITRATION APPEAL NO.54 OF 2013**

The Thane Janata Sahakari Bank Ltd. .. Applicant

vs.

Shri Sandeep Sudhakar Rajeshirke and Ors. .. Respondents

Mr.Bhupesh V. Samant for the applicant

Mr.S.A.Ghaisas i/b Mr.A.M.Joshi for the respondent no.6

**CORAM : K.K.TATED, J.
DATED : 04/12/2015**

PC:

1 Heard the learned counsel for the parties.

2 Though respondent nos.1 to 4 are duly served, no one appeared on behalf of them when the matter was called out.

3 This application is preferred by applicant claimant for continuation of interim relief granted by Hon'ble District Judge-9, Pune in Miscellaneous Civil Application No.326 of 2011 dated 21.4.2011 (by mistake it is stated in order as 24.4.2011) till the hearing and final disposal of the present Arbitration Appeal.

4 The learned counsel for the applicant submits that in the present proceeding before the Arbitrator they preferred application for appointment of Court Receiver. That application was decided by the learned Arbitrator by order dated 1.6.2010 and appointed Mr.P.L.Sonawane, Officer of the Bank as Receiver for the flat No.16, 3rd floor admeasuring 992.00 sq ft. at “Sai Nagar Apartment Condominium on Plot No.42 section 16, Chikhali, Ta: Haveli.” Arbitrator directed the Court Receiver to take physical possession of the flat by putting lock and seal. The said order reads thus:

“Mr.P.L.Sonawane, Officer of the disputed bank is appointed as a receiver for suit flat i.e. Flat No.16, 3rd floor admeasuring 992.00 sq ft. at “Sai Nagar Apartment Condominium on Plot No.42 section 16, Chikhali, Ta: Haveli.” He is ordered to take physical possession of the flat by putting lock and report accordingly. He is also ordered to keep possession of the flat with him till disposal or till any contrary order which is earlier, issue show cause notice returnable on 21/06/2010.”

5 The learned counsel for the applicant submits that pursuant to the said order passed by Arbitrator, Receiver took physical possession of the suit flat by putting his lock and seal. He submits that thereafter Arbitrator passed award dated 7.2.2011 holding that original opponent nos.1 to 4 were jointly and severally liable to pay Rs.16,02,507/- with 10% interest from 1.5.2010. Learned Arbitrator passed order directing respondent no.6 to pay sum of Rs.50,000/- with 10% interest from 5.2.2010. The said order reads thus:

“As discussed in finding to point no.1 disputant had proved claim of Rs.16,02,507/- with 10% interest from 01/05/2010 against all opponents jointly & severally. Order & Award for said amount be passed. As discussed in point no.3, disputant be asked to wait for one month for receiving amount from builder. If amount is not received then disputant be asked to sale mortgaged flat & get satisfied its claim to the extent of Rs.50,000/- plus 10.00% interest from 05/02/2010 as discussed in point No.3 & pay remaining amount to builder. Rule costs follows cause be observed. Accordingly Award be passed.”

6 The learned counsel for the applicant submits that being aggrieved by the said award, they preferred Misc. Civil Application No.326 of 2010 in the court of learned District Judge-9 Pune. That application was decided by the District Court by judgment dated 28.11.2013 and dismissed the application filed by the applicant. At the same time, District Court continued the order dated 21.4.2011 i.e. appointment of Court Receiver in respect of the suit property till the appeal period. He submits that thereafter they preferred the present Appeal. He submits that in the present Civil Application, this court by order dated 23.12.2013 granted ad-interim relief to continue the order passed by the learned District Judge about the Court Receiver. He submits that as on today, the Court Receiver is in possession of the suit property. To that effect, the applicant filed Rejoinder dated 15.10.2015 duly affirmed by the Court Receiver, Pradeep Lalchand Sonawane. He submits that the Court Receiver in paragraph 4 on page 3 of Rejoinder specifically stated that he never handed over the possession of the suit

flat to the respondent no.6 or any other person. It is specifically stated in the said reply that he is in possession of the suit flat as Court Receiver till today.

7 The learned counsel for the applicant submits that as the appeal is already admitted by this court, hence, during the pendency of the Appeal, this Hon'ble Court be pleased to continue the Court Receiver in respect of the suit property. He submits that if the said order is not passed, irreparable loss and injury will be caused to them. He submits that applicant had to recover more than Rs.17.0 lacs from the respondents. Hence, in the interest of Justice, this Hon'ble Court be pleased to continue the order dated 21.4.2011 passed by District court, Pune till the hearing and final disposal of the appeal.

8 On the other hand, the learned counsel for the respondent no.6 vehemently opposed the present Civil Application. Respondent no.6 filed Affidavit in reply dated 30.9.2015. The learned counsel for the respondent no.6 submits that pursuant to the award passed by the learned Arbitrator dated 7.2.2011 and as the petition filed by the appellant before the District Court was dismissed on 28.11.2013 they offered sum of Rs.50,000/- along with interest to the applicant bank. As the applicant bank refused to accept the same, they made appropriate application before the District court and deposited entire amount of Rs.60,000/- before the District court on 21.3.2012. He submits that as the respondent no.6 deposited entire amount in the District court, they are in possession of the suit flat. He relies on paragraph 4 of his reply which reads thus:

“I state that thus, in view of the order passed by Arbitrator vacating the order of appointment of receiver, I am put in possession of the flat.”

9 The learned counsel for the respondent no.6 submits that as the respondent no.6 is in possession of the suit premises, there is no substance in the present Civil Application and same be dismissed.

10 I have heard both the sides at length. There is no dispute that the Arbitrator by order dated 1.6.2010 appointed one Mr.P.L.Sonawane, Officer of the Bank as Receiver of the Suit flat directing him to take physical possession and put lock and seal. The Court Receiver executed the said order and since then, the Court Receiver is in possession of the suit premises.

11 When this court called upon the advocate for respondent no.6 to explain the way in which they got possession of the suit property from Court Receiver, he is not in a position to point out any document or order of the court directing the Court Receiver to hand over possession of the suit flat to respondent no.6. Whenever Court Receiver is appointed in respect of property, Court Receiver can hand over possession to the litigant only on the basis of order passed by competent court.

12 In the present proceeding respondent failed to produce on record any order passed by either Arbitrator or by district court directing Court Receiver to hand over possession of the suit flat to respondent no.6. It is to be noted that Mr.P.L.Sonawane, Officer filed his affidavit

dated 15.10.2015 and specifically stated in paragraph 4 that he is in possession of the suit flat till today. Considering these facts and affidavit dated 15.10.2015 filed by Court Receiver, I am of the opinion that applicant has made out a case for allowing the Civil Application. Hence, following order is passed:

- a) Court Receiver is appointed by the Arbitrator by order dated 1.6.2010 to continue in respect of the suit flat till the hearing and final disposal of the Arbitration Appeal No.54 of 2013.
- b) Civil Application stands disposed of accordingly.
- c) No order as to costs.

(K.K.TATED, J.)