

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 229 OF 2015
IN
ARBITRATION PETITION NO. 1691 OF 2014

M/s. Cosmas Pharmacls Limited and Ors. ... Applicants

IN THE MATTER BETWEEN :

L & T Finance Limited ... Petitioner

Versus

M/s. Cosmas Pharmacls Limited and Ors. ... Respondents

Mr. Chetan Kapadia i/b. Mr. Rohit M. Dalmia for Applicant No. 1
/Respondent No. 1.

Ms.S.I. Joshi a/w. Mr. Girish Thakur for the Petitioner.

CORAM : S.J. KATHAWALLA, J.
DATED : 11TH MARCH, 2015

P.C.

1. The above Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking reliefs as prayed against the Respondents.

2. By a detailed order dated 27th January, 2015, this Court after recording that the Respondents have become liable to pay to the Petitioner a sum of Rs. 14,40,50,410/- disposed of the above Petition by granting the following reliefs to the Petitioner :

“(i) Pending the hearing and final disposal of the arbitration proceedings, the Court Receiver, High Court, Bombay, is

appointed as Receiver in respect of immovable properties, movable assets, current assets, as more particularly described in Exhibits-I, J and K to the Petition. The Court Receiver shall take symbolic possession of the properties/assets, as more particularly described in Exhibits-I, J and K to the Petition and after preparing an inventory of the same file his report before this Court and seek further directions qua the said properties and assets.

(iii) pending the hearing and final disposal of the arbitration proceedings, there shall be an injunction restraining the Respondent No.1 from selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of properties/assets as more particularly described in Exhibits-I, J and K to the Petition.

(iv) The Respondents are directed to disclose on Affidavit all the immovable properties, movable assets and other encumbered and unencumbered properties of the Respondents within a period of four weeks from the date of receipt of this order and to forthwith forward a copy of the Affidavit to the Advocate for the Petitioner”.

3. The Respondent No. 1 filed the above Notice of Motion for recall / review of the order dated 27th January, 2015 inter alia on the ground that his Advocate was unable to remain present before the Court on 27th January, 2015.

4. I have therefore heard the learned Advocate appearing for the Respondent No. 1 on more than one occasion and have also tried to assist the parties to arrive at an amicable settlement. However, the parties have failed to arrive at an amicable settlement at least at this stage. The learned Advocate appearing for the Respondent No.1 has admitted that the Company has failed to pay the monthly instalments payable under the loan agreement from July, 2014 till date aggregating to Rs.3,93,81,195/-. In view thereof, the entire outstanding amount of Rs. 14,40,50,410/- became due and payable by Respondent Nos. 1 to 5 to the Petitioner. The learned Advocate appearing for the Respondent No. 1 has informed the Court that the Respondent as on date is not in a position to even clear the arrears of Rs.3,93,81,195/- and would require twelve months time to pay the eight unpaid monthly installments (from July 2014 to February 2015).

5. By the said order dated 27th January, 2015, this Court has inter alia appointed the Court Receiver, Bombay High Court in respect of the properties / assets as more particularly described in Exhibits-I, J and K to the Petition. However, the Court Receiver is directed to take only symbolic

possession and not physical possession of the said properties / assets and submit his report to this Court qua the said properties / assets.

6. By the said order dated 27th January, 2015, the Respondents are also restrained by an order of injunction from selling, alienating, encumbering, parting with possession and / or creating third party rights in respect of the said properties / assets as more particularly described in Exhibits-I, J and K to the Petition. The Respondents are further directed to disclose on Affidavit all the immovable properties, movable assets and other encumbered and unencumbered properties of the Respondents within a period of four weeks from the date of receipt of the order and to forthwith forward a copy of the Affidavit to the Advocate for the Petitioner.

7. The said order dated 27th January, 2015 in my view is in no way obstructing the Respondent No. 1 from carrying on its business. The order dated 27th January, 2015 is therefore confirmed.

8. The learned Advocate appearing for Respondent No. 1 seeks extension of time to disclose on Affidavit all the immovable properties, movable assets and the other encumbered and unencumbered properties of the Respondents. Time is extended by four week from the date of this order to comply with the directions contained in clause (iv) of th order dated 27th January, 2015.

The above Notice of Motion is accordingly disposed of.

(S.J. KATHAWALLA, J.)