

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 547 OF 2014
IN
ARBITRATION PETITION (L) NO. 518 OF 2014

Union of India **Applicant**

IN THE MATTER BETWEEN

Union of India **Petitioner**

VERSUS

M/s.Ravi Builders **Respondents**

Mr.Suresh Kumar for the Applicant/Petitioner.

Ms.Asha Bhambwani for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 23rd OCTOBER, 2015

P.C.

By this notice of motion, the applicant seeks condonation of delay of 29 days in filing this petition. The arbitration petition was lodged on 14th February, 2014. Notice of Motion for condonation of delay was filed on 17th April, 2014. In the meanwhile the respondents have already filed execution application on 18th March, 2015 for execution of the impugned award.

2. Learned counsel appearing for the respondents has raised an objection to the reliefs being granted in favour of the petitioner on the ground that the Prothonotary and Senior Master had no power to restore the arbitration petition on 3rd August, 2015 without any notice to the respondents or even otherwise. She submits that since the petition was not filed within the time prescribed under section 34(3) of the Arbitration and Conciliation Act, 1996, there was no automatic stay of the

impugned award. She submits that the rights are accrued in favour of the respondents and the respondents are thus entitled to execute the impugned award.

3. The Division Bench of this court in case of ***Lawrence Fernandes vs. State of Maharashtra & Ors.*** in Writ Petition (L) No.2396 of 2014 has held that the Prothonotary and Senior Master has no power to restore any matter and the same can be restored only by the court. This court in its order dated 12th October, 2015 in ***Notice of Motion No.689 of 2015 in Arbitration Petition (L) No.1124 of 2014*** in case of ***Manoj Javeri Stock Broking Pvt. Ltd.vs.Gopika S.Mehta*** has held that there is no automatic stay if arbitration petition is not filed within the time prescribed under section 34(3) of the Arbitration and Conciliation Act, 1996. It is held that if any execution application is filed by the respondent in the meanwhile, Prothonotary and Senior Master has to proceed with such execution application unless stay is granted by this court.

4. The petitioner did not apply for stay of the execution of the impugned award during the pendency of this notice of motion and also during the pendency of this execution application filed by the respondents.

5. Though the delay of 29 days is not sufficiently explained by the applicant in the affidavit in support of the Notice of Motion, I am of the view that interest of justice would be met with if the delay is condoned on the condition that the applicant deposits a sum of Rs.25 lacs within four weeks from today with the Prothonotary and Senior Master of this court and if the respondent is permitted to withdraw 50% of the said amount unconditionally. It is made clear that the impugned award would be stayed only if the amount of Rs.25 lacs is deposited by the applicant within four weeks from today with the Prothonotary and Senior Master. If the amount is not deposited within the time prescribed, the Notice of

Motion as well as the Arbitration Petition to stand dismissed without further reference to court. It is made clear that no further extension would be granted.

6. After the applicant deposits the amount as directed and the respondent withdraws 50% thereof, place the arbitration petition on board for admission after one week of the respondent withdrawing the said amount.

7. It is made clear that the withdrawal of the amount permitted to the respondent would be subject to the outcome of the arbitration petition.

8. In view of the order passed by the Division Bench in case of ***Lawrence Fernandes vs. State of Maharashtra & Ors.***, in my view the Prothonotary and Senior Master has no power to restore the arbitration petition.

9. Since the respondent had already filed execution application during the period when there was no stay, the Prothonotary and Senior Master ought to have processed the application for execution filed by the respondent.

10. I, therefore, pass the following order :-

(a) Notice of Motion is made absolute in terms of prayer clause (a) on the condition that the applicant deposits a sum of Rs. 25 lacs in this court within four weeks from today. Upon such deposit the respondent is permitted to withdraw 50% of the said amount unconditionally, withdrawal of the said amount will be subject to the outcome of the arbitration petition. If the amount is not deposited within the time prescribed, notice of motion as well as petition to stand

dismissed without further reference to court. Respondent shall not execute the award upon withdrawal of the 50% amount until further orders.

(b) Place the arbitration petition on board within one week after the date of withdrawal of the amount by the respondent.

(c) No order as to costs.

[R.D. DHANUKA, J.]