

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1380 OF 2013

Mittal Mistry

..... Petitioner

VERSUS

M/s.Shreeniwas Cotton Mills Limited

..... Respondent

None for the Petitioner.

Mr.Sharan Jagtiani, i/b. Mr.Deepak Poonamiya for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 30th JULY, 2015

P.C.

None appeared for the petitioner when the matter was called out.

2. By this petition filed under section 9 of the Arbitration and Conciliation Act, 1996 the petitioner seeks appointment of Court Receiver and injunction in respect of the property described in prayer clause (a) of the petition.

3. It is the case of the petitioner that the petitioner had purchased a flat described in prayer (a) to the petition on the terms and conditions mentioned in the writing executed between the parties. The petitioner made certain payments to the respondent under the said writing executed between the parties.

4. Mr.Jagtiani, learned counsel appearing for the respondent invited my attention to the correspondence and documents annexed to the petition and in particular letter dated 17th March, 2011 addressed by the petitioner to the respondent and also the subsequent correspondence entered into. By letter dated 17th March, 2011 the petitioner informed the respondent that he seeks to cancel the letter of allotment and agreement for sale and requested the respondent to return

the amounts paid by the petitioner to the respondent. In response to the said letter, the respondent informed the petitioner that as per cancellation clause in the application form executed by the petitioner, though the respondent was entitled to forfeit/claim an amount equivalent to 10% of the total consideration, the respondent would only forfeit booking amount of Rs.18 lacs and would refund the balance amount as per policy of the refund as framed by the respondent. The respondent also made it clear that the respondent would be entitled to deal with and dispose of the said residential flat as they deem fit.

5. The parties entered into further correspondence. The petitioner invoked arbitration agreement and requested the respondent to appoint an arbitrator. The respondent vide their advocate's letter dated 23rd May, 2013 forwarded a cheque of Rs. 1,54,10,715/- to the petitioner as and by way of refund. The respondent who had rights to appoint an arbitrator appointed the sole arbitrator. The petitioner alongwith their advocates' letter dated 28th May, 2013 however returned the said cheque of Rs. 1,54,10,715/- to the respondent.

6. Learned counsel appearing for the respondent also invited my attention to the ad-interim order passed by this court on 5th August, 2013 by which after rendering detailed reasons, this court has rejected the ad-interim measures applied for by the petitioner. It is submitted by the learned counsel that the said ad-interim order passed on 5th August, 2013 has not been impugned by the petitioner by filing any appeal.

7. Though the respondent has already appointed an arbitrator, the petitioner has not taken any further steps in proceedings with the arbitral proceedings.

8. On perusal of the pleadings and the documents annexed to the petition, I am of the prima facie view that the petitioner had committed default in making payment of the balance amount and had himself requested the respondent to cancel the letter of allotment and has demanded refund of the amount paid by the petitioner. Though the respondent had tendered the amount to the petitioner, the petitioner refused to accept. In my view the petitioner has thus not made out any case for any interim measures as prayed in the petition.

9. However, in the interest of justice, it would be appropriate if the respondent deposits the amount of Rs.1,54,10,715/- which was already tendered to the petitioner alongwith their advocate's letter dated 23rd May, 2013. The respondent is accordingly directed to deposit the said amount with the Prothonotary and Senior Master within a period of two weeks from today. It is made clear that such deposit shall be without prejudice to the rights and contentions of the parties and would be subject to the final outcome of the arbitral proceedings.

10. If any such amount is deposited by the respondent, Prothonotary and Senior Master shall invest the said amount in the fixed deposit initially for a period of three years and for a like period after obtaining further orders from this court.

11. Petitioner is directed to proceed with the arbitral proceedings before the learned arbitrator appointed by the respondent without any further delay. Respondent is directed to convey this order to the petitioner.

12. Arbitration petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]