

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

NOTICE OF MOTION NO.737 OF 2015
IN
APPEAL NO.380 OF 2012

Apar Industries Limited	Applicant
versus	
United Storage and Tanks Terminals Ltd.	Respondent

Mr.Sharan Jagtiani i/by I.R.Joshi & Co. for Applicant.

Mr.Ram Kakkar and Azam Doshi i/by M/s.Dutt Menon Dunmorr
Sett for Respondent.

CORAM : MOHIT S. SHAH, C.J. AND
A.K.MENON, J.

DATE : 23 July 2015

PC :

The Notice of Motion has been taken by the applicant for variation of the interim order dated 31 July 2012 and 21 August 2012 in Notice of Motion No.1688 of 2012. By the said orders, this Court had granted interim relief staying further execution proceedings arising from arbitral award dated 15 July 2007.

2. There is no dispute about the fact that the applicant deposited the principal sum of Rs.1.62 crores with 10% interest thereon from 1 July 2004 till date of payment aggregating Rs.2,93,62,500/-. The respondent has already withdrawn the said amount as per order dated 21 August 2012. However, during execution, the appellant's property came to be attached prior to the aforesaid stay order dated 31 July 2012.

3. Learned counsel for the appellant submits that the appellant is ready and willing to furnish bank guarantee of a nationalized bank for the balance principal amount of Rs.4.58 crores. It is submitted that as regards interest payable on the said differential principal amount as per the impugned award, the appellant company has enough solvency as per the particulars given in paragraph 15 of the affidavit dated 27 April 2015 of the Company Secretary of the applicant filed in support of this Notice of Motion.

4. Having heard the learned counsel for the applicant and the respondent, we accept the above submission made on behalf of the applicant. We accordingly direct that upon the applicant furnishing bank guarantee of a nationalized bank of Rs.4.58 crores in favour of Prothonotary & Senior Master of this Court, the attachment levied on the applicant's property at Chembur in Execution Application No.540 of 2012, shall be raised.

5. Notice of Motion No.737 of 2015 is allowed in terms of prayer clause (b) of the Motion. Prayer clause (b) of the Motion reads as under :

"b) In the alternative to prayer (a) above, it is prayed that this Hon'ble Court will be pleased to raise the attachment levied on the movable and immovable property of the appellant situate at Apar House, Corporate Park, Chembur and more particularly described in the Schedule "A" hereto on the appellant's furnishing to this Hon'ble Court a security by way of bank guarantee in a sum of Rs.4.58 crores being the balance disputed amount awarded as damages under the majority award and direct the Sheriff of Bombay to release the said properties from attachment and remove the board of attachment displayed/ affixed on the said properties set out in Schedule Ex."A" hereto."

(CHIEF JUSTICE)

(A.K.MENON, J.)