

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 1834 OF 2014

M/s. Intersearch Investigation Bureau Private Ltd. ... Petitioner

Versus

Mr. Rahunathan R.P. & Anr. ... Respondents

Mr. Sunil M. Kadam for the Petitioner.

Ms. Sapna Raichure i/b. T.N. Tripathi & Company for Respondent No. 2.

CORAM : S.J. KATHAWALLA, J.
DATED : 28TH JANUARY, 2015

P.C.

1. The Petitioner has filed the above Petition seeking interim protection under section 9 of the Arbitration and Conciliation Act, 1996 (the Act), for the following relief :

“That pending the conclusion of the arbitration proceeding and until the making and implementation of Award thereof, this Court be pleased to restrain the Respondent Nos.1 and 2 from disposing, delivering and dealing with in respect of surplus money lying with Respondent No.2”

2. The Petitioner is engaged in the business of consultancy and providing services to solve the disputes relating to Bank matters. The Petitioner and the Respondent No.1 entered into a Memorandum of Understanding cum Service Agreement dated 24th February, 2014 (the

said MOU), pursuant to which the Petitioner agreed to consult and provide services to solve and settle the disputes of Respondent No. 1 with the Bank of Baroda, Chembur Branch, and the Central Bank of India, Nehru Nagar Branch (Respondent No. 2) regarding their unpaid loan amounts. An amount of Rs.20 Lakhs excluding service tax was agreed to be paid by the Respondents to the Petitioner towards consultancy charges and service fees. A copy of the said MOU is annexed and marked Exhibit A to the Petition. Respondent No. 1 also executed a Power of Attorney dated 24th February, 2014 in favour of the Petitioner, which is annexed and marked Exhibit-C to the Petition.

3. According to the Petitioner, after the Petitioner held several meetings with the bankers, filed proceedings on behalf of the Respondents and obtained orders, Respondent No. 1 started avoiding the Petitioner and also failed to respond to the communication addressed to the Respondent No.1 by the Petitioner. The Respondent No. 1 also failed to pay the consultancy and service fee to the Petitioner as agreed under the said Agreement. Instead the Respondent No.1 tried to approach the bankers through some other source, whom the bank declined to entertain for want of proper authority.

4. The Petitioner has submitted that Respondent No. 2 – Central Bank of India has now confirmed the auction of the property of

Respondent No. 1. The auction purchaser has deposited the entire amount of Rs. 108.50 Lacs with Respondent No. 2. The Petitioner submits that after adjusting the dues of Respondent No. 2, there will be surplus amount left with the Bank, which will be handed over to the Respondent No.1 by the Bank.

5. According to the Petitioner, an amount of Rs. 30 Lacs inclusive of service tax is the amount receivable by the Petitioner from Respondent No. 1. The Petitioner has therefore prayed that pending the arbitration proceedings and implementation of the Award, Respondent No. 2 be directed to handover the surplus amount lying with the Respondent No. 2 to Respondent No. 1. This Court has already passed ad-interim orders dated 17th December, 2014, 24th December, 2014 and 14th January, 2015 directing Respondent No. 2 not to handover to Respondent No. 1 or to any other individual firm / partnership / financial institutions, etc., the surplus amount held by the Respondent No.2 from the consideration received on 29th February, 2014 from the auction sale held under the SARFESI Act, without seeking prior permission of this Court.

6. The Respondent No. 1 has been served with the proceedings by substituted service. However, Respondent No. 1 has not come forward before this Court. If the entire surplus amount is handed over to the Respondent No.1 by the Respondent No.2 it will almost be impossible for

the Applicant to recover its dues even if an Award is finally passed in favour of the Applicant, because the whereabouts of the Respondent No.1 are not known as of date and the Respondent No.1 has failed to appear before the Court despite service through publication. In view thereof, the Petitioner is entitled to interim protection pending the arbitration proceedings and implementation of the Award. Hence, the following order :

- i. The Respondent No. 2 shall not handover an amount of Rs. 30 Lacs to Respondent No. 1 or to any other individual firm / partnership / financial institutions, etc. from the surplus amount held by the Respondent No.2 from the consideration received by the Respondent No.2 on 29th February, 2014 from the auction sale held under the SARFESI Act without seeking prior permission of this Court.
- ii. The above Petition is accordingly disposed of.

(S.J. KATHAWALLA, J.)