

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.422 OF 2016**

**in
ARBITRATION NO.1719 OF 2015
with
IPA NO.15 OF 2016**

Shivsare K.Yadav .. Appellant

vs.

M/s Aksha Gold Ornaments Ltd & anr ... Respondents.

....

Mr.Sunil Kadam for Appellant

None for Respondents

**CORAM : ANOOP V. MOHTA &
G.S.KULKARNI, JJ.**

DATE: 5TH JULY, 2016.

ORDER :

1. The appellant has challenged the order dated 10 February 2016 in an Arbitration petition filed by the appellant under section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') whereby after considering the submissions as well as documents as well as averments so made on behalf of the appellant the learned Judge has in fact granted ad-interim relief in terms of prayer clause (d) which is as under:

“(d) That pending the admission, hearing and final disposal of the petition, the Respondent nos.1 and 2, its Directors, Officers, servants be restrained by an order and injunction of this Hon'ble Court from and in any manner whatsoever disposing of, alienating, transferring, encumbering, parting with possession or creating any third party

rights or any other rights whatsoever in respect of the properties more particularly described in the schedule of properties annexed hereto as Exhibit E”

2. The appellant however, has filed this appeal with a submission to grant an order for appointment of a Court Receiver as the same was not granted by the learned Judge after hearing the petitioner.

3. We have heard learned counsel for the appellant even on facts and have gone through the documents so placed on record in support of his contentions. The case of the appellant is that in pursuance to an agreement between the parties because of non-compliance for various reasons, the appellant is stated to have suffered damages/loss and therefore to secure the same, present section 9 application was filed. Admittedly, inspite of filing the section 9 petition in question in the year 2015, till this date, no Arbitrator as per the agreement has been appointed. When inquired, it is stated that a section 11 application is also not filed. The basic breach by the respondent even if any, therefore is of more than one year old, and no effective steps were taken to get any protective order

during the period. The learned Judge inspite of the above background protected the interest of the appellant by granting prayer in terms of prayer clause (d) as noted above. In our view, considering the facts of the case the protection of an injunction as granted by the learned Single Judge is a sufficient protection for the time being, pending the invocation of further proceedings to be adopted by the appellant to get an arbitrator appointed. Therefore, there is no case made out by the appellant for appointment of a Court Receiver as prayed in the present appeal.

4. Taking an over all view of the matter and for reasons so recorded by the learned Judge, we see no case made by the appellant to interfere with order. Prayer for appointment of Court Receiver therefore, is also rejected.

Appeal is dismissed accordingly. No costs.

(G.S.Kulkarni, J.)

(Anoop V. Mohta, J.)

