

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

ARBITRATION PETITION NO.1584/2014

Phoenix ARC Pvt. Ltd. ... Petitioner

Vs.

Mr. Paresh Prakash Pavatekar ... Respondent

Mr. Rohan Savant a/w. Mr. Nikhil Rajani i/b. M/s. V. Deshpande & Co.
for the Petitioner
Mr. Vilas B. Tapkir for the Respondent

CORAM : K. K. TATED, J.
DATE : FEBRUARY 10, 2016

PC.:

1. Heard. The Petitioner filed this petition u/s. 9 of the Arbitration and Conciliation Act, 1996 for directions to Respondent No.1 to furnish security/ bank guarantee of the value of Rs.7,15,349/- and also for an order of injunction restraining the Respondent from creating any third party right, title and interest in respect of the suit property viz. Shop No.5, ground floor, admeasuring 90 sq.mmtr. of Jogeshwari Cooperative Housing Society, Ltd., Sy.No.34, Budhwar Peth, Pune, as described in Exhibit- D to the petition.
2. This court, by order dated 09/05/2014 granted ad-interim relief in terms of prayer clause (c).
3. During pendency of the present petition, the sole arbitrator

passed award dated 29/06/2015. The operative part of the award reads thus:

(a) The respondent do pay to the claimant a sum of Rs.7,15,349/- on account of the total outstanding amount which includes principal loan amount, contractual interest and other charges, subject to adjustment of payments made by the respondent, if any after 10 March 2010.

(b) The respondent do pay to the claimant a sum of @ 18% simple interest on account of the interest on the outstanding amount from the date of filing of the claim petition i.e. 29 January 2013 till the passing of the award.

(c) The respondent do pay to the claimant a sum of interest @ 18% p.a. on the amount awarded from the date of award till realization of the amount.

(d) The respondent do pay to the claimant a sum of Rs.5000/- (Rupees Five Thousand Only) is awarded as cost towards present proceedings.

4. In the present proceedings, the Respondent filed their Affidavit-in-Reply dated 05/07/2014 stating that the suit property does not belong to the Respondent but is of his father. In support of this contention, the Respondent placed on record share certificate issued by the housing society.

5. The learned counsel for the Petitioner submits that though the award was passed by the sole arbitrator on 29/06/2015, this Hon'ble Court be pleased to continue the ad-interim granted by this court in terms of prayer clause (c). He submits that the Petitioner has to take appropriate steps for recovery of the amount as per the award and in between if the Respondent creates any third party right, title and

interest in respect of the suit property as described in Exhibit- D, it will be very difficult for them to recover the dues. Hence, in the interest of justice, this Hon'ble Court be pleased to continue the ad-interim relief in terms of prayer clause (c).

6. The learned counsel for the Petitioner filed rejoinder dated 16/07/2015, wherein, the Petitioner relies on Index-II to show that the suit property was mortgaged by the Respondent along with his father and another Index-II to show that the Respondent sold the suit property along with his father after the order passed by this court i.e. on 09/05/2014. He submits that these two documents show that Respondent was joint owner of the suit property and in spite of injunction order granted by this court on 09/05/2014, the Respondent disposed of suit property on 08/01/2015. Hence, this Hon'ble Court be pleased to make the petition absolute in terms of prayer clause (c).

7. On the other hand, the learned counsel for the Respondent vehemently opposed the petition. He submits that he already filed Affidavit-in-Reply dated 05/07/2014 stating that the suit property does not belong to him. He relies on paragraph 4 of the Affidavit-in-Reply. He submits that there is no question of granting any injunction against his father. He is not party before this court. Hence, petition itself is liable to be dismissed on the ground that the Petitioner is seeking injunction in respect of the property belonging to third person.

8. It is to be noted that, the respondent, on a solemn affirmation specifically stated that the suit property does not belong to him. In

support of this, he placed on record share certificate issued by the cooperative society. In view of these facts, the petitioner is not entitled to any relief in terms of prayer clause (c). Apart from that, the sole arbitrator already passed award on 29/06/2015. Hence, an alternate remedy is available to the petitioner to recover his dues.

9. Considering these facts, the arbitration petition stands dismissed.

10. At the request of the learned counsel for the petitioner, ad-interim relief granted by this court on 09/05/2014 to continue for a period of 4 weeks.

JUDGE