

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1882 NO.2016
IN
ARBITRATION PETITION NO.387 OF 2016

M/s Fairyland Co-operative Housing Applicant
Society Ltd.

In the matter between

M/s Fairyland Co-operative Housing Petitioner
Society Ltd. (Ori. Respondent)

Vs.

M/s Admirecon Infrastructure Pvt. Respondent
Ltd. (Ori. Claimant)

Mr. Ali Abbas Delhiwala a/w Devika Bhosle i/by Divya Shah
Associates for the Petitioner.

Ms. Priyanka Pawar, Advocate for the Respondent.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 19th August, 2016

P.C. :

1 This Notice of Motion is taken out by the petitioner for interim stay of the award during the pendency of the application filed by the petitioner for setting aside of the award. The petition was admitted on 13th July, 2016 and the petitioner

was directed to file Notice of Motion for seeking stay of the impugned award.

2 The award directs the petitioner to pay a total amount of Rs.26,42,937/- towards the work done by the respondent of the repairs to the petitioner's building.

3 The petitioner is a housing society, registered under the Maharashtra Co-operative Housing Societies Act. It desired to carry out the work of “repairs, renovation, plastering, painting, water-proofing” etc. of the building and invited tenders therefor. The respondent submitted its tender, which was accepted by the petitioner and the Letter of Intent dtd. 9th January, 2007 accepting the bid was issued. The parties then entered into Memorandum of Understanding dtd. 27th January, 2007 and a formal agreement dtd. 17th February, 2007. Under the agreement, the date of commencement of the work was 5th February, 2007 and the date of the completion was of 4th June, 2007. Apparently, thereafter there was some additional work given to the respondent and the total value of the contract given to the respondent was approximately of Rs.45,00,000/-. A part of that amount has been paid from time to time leaving balance of about Rs.15,00,000/-. The petitioner had appointed one M/s Jatin Ambani, Civil Engineering Consultants as their Consultant for the work to be done to the building of the society. During the course of the work of repairs and renovation etc., the respondent

had submitted bills for the actual work done from time to time. As required under the agreement between the parties, the bills had to be certified by the Consultant engaged by the petitioner and the payment was to be made after the certification. According to the respondent, the petitioner had failed to make the payment despite certification of the work, after actual measurements were taken by the Consultant of the petitioner.

4 Before the learned Arbitrator, the petitioner had raised the contention of bar of limitation contending that the claim of the respondent was barred by the Law of Limitation. According to the petitioner, the period of limitation for the respondent to claim the amount for the work done had commenced in the year 2008, when according to the respondent, the work of repairs was complete. The invocation of the arbitration was on 12th March, 2013 and therefore the claim was barred by Law of Limitation. Mr. Delhiwala, the learned advocate for the petitioner submits that the learned Arbitrator has not decided the question of limitation and therefore the award passed by him cannot be sustained. Since the award cannot be sustained at all, there should be stay of the execution of the award without imposing any condition.

5 Perusal of the proceedings shows that after extensive correspondence between the parties, the petitioner, by its letter dtd.29th September, 2010 rejected the claim of the respondent of

the unpaid bills raised by it. According to the respondent, the starting point of limitation is the date of rejection of the claim by the petitioner i.e. 29th September, 2010. Therefore, the invocation of the arbitration, on 12th March, 2013 was within the period of limitation prescribed under the Limitation Act. This in my opinion makes out an arguable case for the respondent as regards the question of bar of limitation.

6 As regards the merits of the case, the grievance of the petitioner is that the learned Arbitrator has not considered the fact that the amount had been withheld by the petitioner on account of the bad quality of the work done, which according to the petitioner is sufficiently reflected in the photographs produced by it before the learned Arbitrator. The parties did not lead any evidence before the learned Arbitrator. They were content with production of documents. The photographs themselves do not indicate the date on which the same were taken. In the absence of any such further evidence to explain the photographs today at the prima facie stage of the proceedings, it is difficult to accept that the photographs are the evidence of the quality of the work by the respondent. Perusal of the award shows that the learned Arbitrator has granted R.A. bills no.1, 2, 3 ,4 and 5 submitted by the respondent to the petitioner from time to time and which bills had been certified by the Consultant of the petitioner.

7 The petitioner had also raised a counter-claim for damages for “mental agonies and inconvenience” to it's members to the extent of Rs.10,00,000/-. Since, admittedly the petitioner did not lead any evidence, on the claim for damages, the learned Arbitrator has rejected the same. The other claims raised by the respondent have not been allowed by the learned Arbitrator. Even the interest awarded of simple interest @ Rs.10% per annum on the unpaid bills for a period of 7.2 years, totalling to Rs.10,77,275/- is prima facie reasonable. In these facts and circumstances of the case, in my opinion, there can be only conditional stay of the impugned award. It is therefore directed that on the petitioner depositing a sum of Rs.22,00,000/- in the court within a period of eight weeks from today, there shall be stay of the impugned award pending the petition. On such deposit being made, the respondent is at liberty to apply for withdrawal.

8 With the above order, the Notice of Motion is disposed off.

(Smt. R.P. SondurBaldota, J.)