

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISCELLANEOUS CIVIL APPLICATION NO.191/2015

M/s. Tadse Constructions, through its Proprietor and another

..VS..

L & T Finance Limited, Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : 18.7.2016.

Heard Shri (Dr.) R.S. Sundaram, Advocate for the applicants and Shri Mohd. Qubbawala, Advocate for the non-applicant Nos.1 and 2.

A dispute arose between the applicants and the non-applicant Nos.1 and 2, therefore, to resolve it the non-applicant Nos.1 and 2 appointed the non-applicant No.3 as Arbitrator by the communication dated 19th November, 2012. It is not in dispute that the Arbitrator entered the office, parties submitted their statements of claim and draft issues. At this stage, the applicants have filed this application making grievance that the learned Arbitrator has not taken any further steps since 11th November, 2013 and, therefore, it is necessary that the mandate of the earlier Arbitrator be terminated and another Arbitrator be appointed. This application is filed on 5th January, 2015. This Court directed issuance of notice to the non-applicants by the order dated 20th February, 2015. In response to the notice, the non-applicant Nos.1 and 2 have filed their submissions opposing the claim of the applicants. In the submissions, the non-applicant Nos.1 and 2 have stated that if the mandate of Arbitrator is terminated by this Court, the non-applicant Nos.1 and 2 would be entitled to appoint another Arbitrator as per the terms of the agreement. The non-applicant Nos.1 and 2 sought liberty to appoint another Arbitrator as per the terms of agreement. The

reply is filed on 7th July, 2015.

Shri Qubbawala, Advocate for the non-applicant Nos.1 and 2 has pointed out from page No.68 of the paper book which is part of deed of guarantee and loan cum hypothecation agreement and has referred to Clause “(d)” of it which provides that in the event of death, refusal, negligence, inability, incapability of the person appointed as sole Arbitrator, new Arbitrator may be appointed by L.T. Finance. It is submitted that the applicants did not approach the non-applicant Nos.1 and 2 with the request to terminate the mandate of earlier Arbitrator and to appoint new Arbitrator. It is submitted that now as the applicants are making grievance against the earlier Arbitrator, the non-applicant Nos.1 and 2 will act as per Clause “(d)” referred above and appoint new Arbitrator.

Considering the facts of the case and assurance given on behalf of the non-applicant Nos.1 and 2 that the mandate of earlier Arbitrator would be terminated and new Arbitrator would be appointed within four weeks, in my view, the grievance of the applicants does not survive at this stage. There is no reason to continue with the present application. The application is **dismissed**. The parties to bear their own costs.

At this stage, Shri (Dr.) R.S. Sundaram, Advocate has submitted that venue of arbitration should be at Nagpur as it is convenient to both the parties. The learned Advocate for the non-applicant Nos.1 and 2 has pointed out Clause 17.2 of the loan cum hypothecation agreement which provides that the venue of Arbitrator shall be at Mumbai. This point is kept open to be considered by the learned Arbitrator, if raised by any of the party.

JUDGE

CERTIFICATE

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order”.

Uploaded By : N.V. Tambaskar.
Personal Assistant.

Uploaded On : 22.7.2016.