

Application No.1264 of 2016

RAJIV SHAKDHER,J.

This application is filed under Section 9 of the Arbitration and Conciliation Act 1996 seeking a direction to the respondents to furnish security for a sum of Rs.4,53,53,119/-, failing which, to order attachment of the property morefully described in the schedule to the judges summons.

2. In this application, notice was issued to the respondents, despite which, the respondents have not entered appearance. Further more, as the applicant did not seek relief against respondents 3 and 4, by order dated 20.04.2016, the respondents 1 and 2 were directed to furnish security within a period of four weeks, failing which, this Court indicated that it shall be constrained to pass an order of attachment.

2.1. This Court directed the Registry to communicate the said order, i.e. order dated 20.04.2016, to the respondents. That apart, the applicant was also permitted to communicate the said order privately.

2.2. I am informed by the Registry that the communication of the order, i.e. order dated 20.04.2016 was sent to the respondents.

2.3 To be noted on earlier occasion, i.e. 15.7.2016, one Mr.S.D.Ramalingam, Advocate, entered appearance on behalf of the respondents 2 to 4 and sought time to file reply and accordingly, two weeks time was granted. However, on 10.08.2016, again the learned counsel for the respondents 2 to 4 sought further time to file reply. Time was once again granted to file reply, however, subject to payment of cost of Rs.5,000/-.

2.4 Learned counsel for the respondents says that no instructions have been received from his clients, despite his having got in touch with his clients.

2.5 I am informed by the learned counsel for the applicant that the respondent No.1 is the principal borrower, while the respondents 2 to 4 are the guarantors. It is also informed me that the property referred to in the schedule appended to the Judges summons is owned by the respondent No.1.

2.6. Learned counsel for the applicant says that the communication of the order dated 20.04.2016 was sent to the respondent No.1. He has also filed an affidavit of service to that effect.

3. Learned counsel for the applicant prays for attachment of the immovable property described in the schedule appended to the

judges summons.

4. It may be noted that it is the case of the applicant that the respondents have availed loan in the sum of Rs.3,70,00,000/- under the Loan Agreement dated 27.11.2014. The said amount was to be paid in 60 Equated Monthly Instalments (EMIs). The first instalment was to commence from 5.1.2015, while the last instalment was payable on 5.12.2019. The applicant submits that under the aforementioned Loan Agreement, the respondents have undertaken to repay the loan amount along with finance charges.

5. Learned counsel for the applicant says that the respondents have not adhered to the obligations undertaken under the aforementioned loan agreement. It is the case of the applicant that the respondents are liable to pay a total sum of Rs.4,53,53,119/- as on 22.01.2016.

6. Learned counsel for the applicant further states that arbitration proceedings have been initiated and the same are pending adjudication.

7. It is clear that the respondents are moving towards a situation where the award shall become a paper decree, if and when obtained. In this circumstance, there shall be an order of attachment qua the property described in the judges summons to the extent of the claimed amount, i.e., Rs.4,53,53,119/-. For the sake of convenience, the particulars of the said property are noted

hereunder:

SCHEDULE OF PROPERTY

Item No.1

All that piece and parcel of diverted land bearing Patwari Halka Old No.17 and New No.45 Survey No.105/1/1 Village Lasudiya Mori Tehsil and Indore District (M.P) with land admeasuring 9950 sq.ft. And construction thereon existing and future and bounded on the

East by : Remaining part of Survey No.105/1/1

West by : Common Road

North by : Government Land

South by : Remaining part of Survey No.105/01/1

and the property situates within the Registration District of Indore and Sub Registration District of Sub District Indore.

Item No.2

All that piece and parcel of diverted land bearing Patwari Halka Old No.17 and New No.45 Survey No.105/1/3 Village Lasudiya Mori Tehsil and Indore District (M.P) with land admeasuring 11406 sq.ft. And construction thereon existing and future and bounded on the

East by : Remaining part of Survey No.105/1/3

West by : Other land

North by : Land of Survey No.105/1/2

South by : Land of Survey No.105/01/4

and the property situates within the Registration District of Indore and Sub Registration District of Sub District Indore.

8. Since the arbitration proceedings have been initiated and the same are pending, the parties are given liberty to take necessary steps hereafter, albeit, in accordance with law, as may be deemed fit.

9. Accordingly, this application is disposed of in the aforesaid terms.

22.08.2016

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