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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ O.M.P.(I) (COMM.) 401/2016

R.P .MALHAN & COMPANY PRIVATE LIMITED ..... Petitioner

Through : Mr Sunil Chaudhary, Adv

Versus

KOTAK MAHINDRA BANK LTD ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **07.10.2016**

<u>IA No.12610/2016</u>

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

<u>O.M.P.(I) (COMM.) 401/2016</u>

3. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia,* praying as under:-

> "(a) Pass an ex-parte ad-interim order restraining the Respondent from in any manner, taking any action, more particularly coercive action against the Petitioner such as auction/sale of the "Residential Apartment" and attachment of the Bank Accounts of the Petitioner etc. in pursuance to the fraudulent, false, forged and fabricated Loan Agreement dated 28.3.2013

> which is null and void in the eyes of law and is not binding on the parties;"

4. It is the case of the petitioner that although it had signed the loan agreement dated 28.03.2013, however the same had certain blanks. It is alleged that the respondent bank has forged and fabricated the said agreement and filled in particulars, which were never agreed to.

5. The petitioner states that it had entered into an arrangement to purchase a residential apartment in a Development known as 'Caitriona Residential Apartment Complex' from M/s Ambience Private Limited (hereafter referred as 'the Builder'). The Builder issued a provisional allotment letter dated 05.02.2013 allotting apartment D-502 in the said complex, to the petitioner. It is stated that the basic sale price for the said apartment was fixed at ₹12,35,96,281/-.

6. The petitioner states that the Builder had also agreed to arrange a loan for the subject apartment. In terms of the arrangement, the petitioner had paid a sum of ₹3.00 Crores to the Builder and respondent (hereafter 'the Bank') had agreed to provide a loan of ₹4.50 Crores, which was to be disbursed directly to the Builder on execution of certain documents; the most important document being the Flat-Buyer's Agreement. The petitioner alleges that the Builder as well as the Bank hatched a conspiracy to defraud the petitioner and as a part of the said conspiracy, the Bank disbursed the sum of ₹3,24,71,802/- on 31.03.2013 without the necessary conditions being complied with including the execution of the Flat Buyer's Agreement. The petitioner states that the entire loan availed from the Bank was to be secured by the flat allotted to the petitioner and the said

original agreement was to be retained by the Bank as a security against the loan.

7. Admittedly, certain disputes have arisen between the petitioner and the Builder. The Bank has now instituted recovery proceedings since the petitioner has not honoured the instalments for repayment of the loan. The petitioner states that it has also filed a Civil Suit in a Court at Gurgaon seeking restraining orders against the Bank from recovering the Equated Monthly Instalments (EMIs) pursuant to the ECS instructions issued by the petitioner to its bankers. It is stated that the said instructions were also signed in blank. Admittedly, no stay order has been granted in favour of the petitioner in those proceedings.

8. The learned counsel appearing on behalf of the petitioner states that in the suit filed by the petitioner, the Bank filed a Written Statement in January 2015 and from the said pleadings the petitioner became aware that the Bank did not hold any security by way of the Flat Buyer's Agreement. The petitioner asserts that such agreement was never executed.

9. I have heard the learned counsel for the petitioner.

10. In my view, the interim orders as prayed for by the petitioner cannot be granted for several reasons.

11. First of all, the statement of the petitioner that it became aware that the Bank did not hold the security of the Flat Buyer's Agreement only in January 2015 cannot be accepted because this is inherently contrary to its assertion that such agreement was never executed.

Surely, the petitioner would have to be a party to such agreement and since the same had never been executed, the question of the petitioner becoming aware that the bank was not secured by such security only in January is plainly irrational. The petitioner was fully aware that the Bank had disbursed the loan granted to the petitioner by directly paying the Builder on behalf of the petitioner, on 31.03.2013. This was admitted by the petitioner in its letter dated 07.06.2015 sent to the Bank. More importantly, the EMIs were being debited from the petitioner's bank accounts as the per its ECS instructions from April, 2013 onwards and the petitioner did not protest against such recovery at the relevant time.

12. Secondly, the fact that the petitioner had signed the agreements in questions is also not in dispute. Further the petitioner had also acted in accordance with its obligations to the Bank and had started paying the EMIs. Even if it is accepted that there were certain blanks in the loan agreement or that the loan had been disbursed hurriedly, there is no denying the fact that the petitioner had agreed to avail the loan from the Bank and was aware that the Bank had paid the amount directly to the Builder on behalf of the petitioner.

13. Thirdly, that the disputes between the parties are pending before other fora; the petitioner had already instituted a suit way back in the year 2014 (although, the details of which are not readily available) and the Bank has instituted proceedings before the Debt Recovery Tribunal (DRT). Even, according to the petitioner it had became aware that the security of the flat was not available with the

Bank in January, 2015. Thus, the present petition is belated, which disentitles the petitioner for any discretionary relief.

14. Fourthly, the respondent has already instituted the recovery proceedings before the DRT, and therefore, no order restraining the bank from recovering the balance amount of loan disbursed along with interest, can be granted.

15. The present petition - apart from being *prima facie* unconvincing - is also highly belated and is accordingly dismissed.

16. However, it is clarified that this order will not preclude or prejudice the petitioner from claiming any relief in any appropriate proceedings.

VIBHU BAKHRU, J

OCTOBER 07, 2016

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