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

APPEAL (L) NO.175 OF 2016

IN

NOTICE OF MOTION (L) NO.1127 OF 2014

IN

ARBITRATION PETITION NO.663 OF 2015

Bank of India

... Appellant

Vs.

L and T Finance Ltd. and Ors.

... Respondents

Mr. O.A. Das for the Appellant.

Ms. Shakuntala Joshi a/w Ms. Jalpa Pithadia i/by S.I. Joshi & Co. for
the Respondent No.1.

Dr. M.S. Deshpande, Court Receiver present.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 21st APRIL, 2017

PC.

1 Heard the learned counsel appearing for the appellant. A
Petition filed by the first respondent against the second respondent
under Section 9 of the Arbitration and Conciliation Act, 1996 was
disposed of by the learned Single Judge by order dated 8th January,
2014. In the said disposed of arbitration petition, a notice of motion
was taken out by the appellant which has been dismissed by the

impugned order dated 9th July, 2014.

2 The first prayer in the notice of motion was for intervention in the disposed of Petition. The other prayers were for recall or setting aside of the order dated 8th January, 2014 and consequential order dated 9th July, 2014. By the impugned order, the learned Single Judge held that the application for intervention was not maintainable in a disposed of arbitration petition. While passing the impugned order, the learned Single Judge has reserved liberty in favour of the appellant. The relevant part of the order reads thus :-

“In my view, since the arbitration petition itself is disposed of, question of impleadment of the applicant to such disposed of petition does not arise. It is however made clear that if any independent proceedings are filed by the applicant against the borrowers as well as the petitioner herein and if any prayer is sought for modification of the order passed by this court on the ground that the applicant has higher rights to protect the securities of the applicant under the provisions of SARFAESI Act, this court will consider such application on its own merits. It is made clear that in this notice of motion, this court has not expressed any views about the right, title or entitlement of the applicant against the respondents or against the petitioner and the said issue is kept open which can be decided in the independent proceedings as may be filed by the applicant. Notice of Motion is accordingly disposed of. No order as to costs.”

3 The learned counsel appearing for the appellant states that in terms of the liberty granted, he had taken out a notice of motion

which has been dismissed for non-prosecution. He further states that the application for restoration is pending.

4 We see absolutely no error in the impugned order dated 9th July, 2014 when the learned Single Judge held that prayer for intervention by the appellant in a disposed of arbitration petition was not maintainable. In view of what is observed in order dated 9th July, 2014 which is quoted above, the alleged rights claimed by the appellant has been adequately protected by the learned Single Judge. Hence, there is no merit in the Appeal and the same is dismissed.

(A.K. MENON, J)

(A.S. OKA, J)