

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

COMM. ARBITRATION PETITION (L) NO.272 OF 2017

Marico Limited

....Petitioner

Vs.

Dani Wooltex Corporation and Anr.

....Respondents

Mr. Shyam Mehta, senior advocate a/w. Mr. Sandeep Parikh, Ms. Sukhada Wagle and Ms. Apurva Gupte i/b. Hariani and Co. for petitioner.

Mr. Darius Khambatta, senior advocate a/w. Ms. Trupti Shetty and Ms. Pooja Shah i/b. M/s. Dhruve Liladhar and Co. for respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 27th JUNE, 2017

PC.:

1 The present petition is filed for grant of interim injunction against respondents and the injunction sought are in the alternative. Prayer clauses – (a) and (b) read as under :

“(a) (i) that the order dated 22nd October, 2012 (Exhibit H hereto) passed by this Hon'ble Court be continued till 5th September, 2017;

(ii) that in the alternative to prayer (a) (i) hereinabove, this Hon'ble Court be pleased to restrain respondent no.1, its servants and/or its agents from in any manner whatsoever dealing with and/or disposing of and/or transferring and/or selling and/or creating any 3rd party right, title or interest in respect of the said Plot 'D' and 1,00,000 sq. ft. FSI/TDR available in respect of the said larger property till 5th September, 2017;

(b) without prejudice to prayer (a) (i) and (a) (ii) hereinabove and in the alternative, respondent no.1, its servants and/or agents be restrained by an order and injunction of this Hon'ble Court from in any manner dealing with and/or disposing of and/or transferring and/or selling and/or creating any 3rd party right, title and interest in respect of the said smaller plot described in Schedule being Exhibit 'B' hereto and shown on the sketch plan being Exhibit 'B-1' hereto and 69,128 sq. ft. FSI/TDR available in respect of the said larger property till 5th September, 2017.”

2 Respondent no.1 is the owner of four pieces of land admeasuring in the aggregate 17,568.30 sq. mtrs. with structures thereon.

In or around 2004, petitioner was looking for a suitable place for its business operations. Petitioner was introduced to respondent no.1 who informed that a portion of the larger property admeasuring 3,777.24 sq. mtrs. located in the south east corner of the larger property was available for development. Petitioner and respondent no.1 entered into an MOU in or around March, 2005 under which respondent no.1 agreed to transfer and convey to petitioner 3,777.24 sq. mtrs. with right to develop, construct and complete thereon a commercial building having FSI of atleast 69128.56 sq. ft. Subsequent thereto, after respondent no.2 also came into the picture, it was agreed by respondent no.1 and respondent no.2 that instead of the smaller plot admeasuring 3,777.24 sq. mtrs., a portion admeasuring about 2,000 sq. mtrs. situated on the same south east side of the larger property will be given to petitioner and petitioner would be entitled to develop, construct and complete thereon a commercial building having FSI of 1,00,000 sq. ft.

3 Disputes arose and the parties agreed to maintain status quo and referred the disputes to the sole Arbitrator. By an order dated 22nd October, 2012, it was also recorded that respondents will not in any manner transfer, sale and/or in any manner exploit or deal with 1,00,000 sq. ft. FSI/TDR out of FSI/TDR available from the larger property in any manner whatsoever, till the award is declared by the Learned Arbitrator

and for a period of six weeks thereafter. In the arbitration proceedings, petitioner made a substantive claim as under :

“(a) An award declaring that the agreement as set out in the Memorandum of Understanding (Exhibit 'C') as varied by the Consent Terms (Exhibit 'H') is valid, subsisting and binding;

(b) issuance of an award, order and direction to the respondents for specific performance of the agreement as set out in the Memorandum of Understanding (Exhibit 'C') as varied by the Consent Terms (Exhibit 'H'); and to act upon, execute and perform all such acts, deeds, matters and things and execute all writings as may be necessary for the purpose of effectively performing the agreement as set out in the Memorandum of Understanding (Exhibit 'C') read along with the Consent Terms (Exhibit 'H');

(c) in the alternate to prayer (a) and (b)

(i) an award declaring that the termination letter dated 4th June, 2012 (Exhibit 'LL1') is illegal, null and bad in law, unsustainable and not binding upon the claimants;

(ii) issuance of an award, order and direction to the respondent no.1 for specific performance of the agreement as set out in the Memorandum of Understanding (Exhibit 'C'); and to act upon, execute and perform all such acts, deeds, matters and things and execute all writings as may be necessary for the purpose of effectively performing the agreement as set out in the Memorandum of Understanding (Exhibit 'C').”

4 The Arbitrator has given an Award dated 6th May, 2017 in favour of petitioner granting prayer clause (c) (i) and (c) (ii) to the statement of claim as quoted above.

5 Petitioner has filed this petition seeking their main relief, the prayer that has been rejected by the Learned Arbitrator. Petitioner is even today unsure whether they will accept the Award in *toto* or will file a petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award. According to Mr. Mehta, senior counsel for petitioner, the 90 days period will expire some time on or about 5th August,

2017 and petitioner need one more month for the order dated 22nd October, 2012 to continue.

6 Mr. Khambatta, senior counsel for respondent no.1, at the outset, made a without prejudice offer that his clients will agree for ad-interim in terms of prayer clause – (b) of this petition excluding the words “dealing with” and they be given time to put in a reply to oppose the petition itself.

7 I have heard the counsel for petitioner and respondent no.1. Section 9 (1) of the Arbitration and Conciliation Act, 1996 reads as under :

9. Interim measures, etc. by Court.—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

8 It is, therefore, clear that a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but

before it is enforced in accordance with Section 36, apply to a court for protective reliefs. The status of the matter today is not before or during arbitral proceedings. The status is after making the Award but before enforcement. The Award is in favour of petitioner but rejecting certain claims of petitioner. The reason why Section 9 provides “or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36 is because once a party obtains an Award and by the time it enforces the Award as provided under Section 36, there is a likelihood of respondent or losing party disposing of its assets to defeat the Award. Therefore, a party can come under Section 9 after the making of the arbitral award only after the party wishes to enforce the Award in accordance with Section 36. If it is going to challenge the Award, Section 9 does not come into play at all. Since petitioner is not ready to make a statement today because according to petitioner it has 90 days to take a decision, certainly the application under Section 9 today is premature and is not maintainable. If petitioner is going to challenge the Award because they have not got prayer clauses – (a) and (b) in the statement of claim, the question of filing an application under Section 9 does not arise.

9 Therefore, petition stands dismissed with liberty to petitioner to take out such an application once petitioner decides that it will accept the Award and press for enforcement under Section 36.

10 Mr. Mehta requests that the ad-interim order granted on 22nd October, 2012 be extended by two weeks.

11 Since I have held that this petition itself is premature and not maintainable under Section 9, the question of extending the period granted in October, 2012, which expired on 17th June, 2017 in a petition under Section 9, does not arise. Prayer rejected.

12 Notwithstanding dismissal of the petition, petitioner to remove all office objections and get the petition numbered within three weeks.

(K.R. SHRIRAM, J.)