

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2011 OF 2018

Iftekhhar Ahmad Khan	...	Petitioner
V/s.		
Vikhar Ahmad Khan & Anr.	...	Respondents

- Mr.Balkrishna Joshi i/b. Mr.Rohan H. Barge for the Petitioner.
- Mr.A.R. Gole a/w. Mr.Ashish Gogate for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and learned counsel for Respondent No.1.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the orders dated 24th January, 2018, passed by the Ad-hoc District Judge-2, Thane, below Exhibit-22 and Exhibit-24 in Arbitration Regular Darkhast No.16 of 2017.

3] The Application at Exhibit-22 was filed by the Respondent-Decree Holder in whose favour the Award for the recovery of an

amount of Rs.79,57,223/- is passed for attachment of the two cars belonging to the present Petitioner, who is the judgment debtor in the said Award; whereas the Application at Exhibit-24 was filed by the Respondent-Decree Holder for attaching the Bank Account of the Petitioner, which is in Andhra Bank, Branch Thane, in recovery of an amount of Rs.79,57,223/-.

4] The trial Court has vide its impugned order allowed both these applications and hence, being aggrieved thereby, the instant Writ Petition is preferred.

5] The submission of learned counsel for the Petitioner is that, the Petitioner has already preferred an application under Section 12(5) of the Arbitration and Conciliation Act, 1996 (*for short, "Arbitration Act"*) challenging the locus of the Arbitrator to decide the said Arbitration as he was not eligible to be appointed as an Arbitrator, in view of his being closely related to the Petitioner and the Respondent, as their father. It is urged that the said application is yet not decided by the trial Court. Not only that, even the application filed by the Petitioner under Section 34 of the Arbitration Act for challenging the Award is also not decided. Both the applications are yet pending for decision. In such situation, the trial Court has committed an error in attaching the Bank Account of the Petitioner

and also his two cars.

6] However, the perusal of the impugned order passed by the trial Court reveals that the Petitioner has only preferred the 'delay condonation application' in preferring the application under Section 34 of the Arbitration Act, for challenging the Award. The delay is of about 358 days in preferring the said application and no stay order is yet requested or obtained in the said application. In such situation, the trial Court has rightly held that, it can proceed with the execution proceeding, in the absence of any stay obtained either in the application under Section 34 or even in the application under Section 12(5) of the Arbitration Act, filed by the Petitioner. No illegality can be found in the impugned order of the trial Court.

7] The Writ Petition, therefore, being without merits, stands dismissed.

8] At this stage, learned counsel for the Petitioner requests that this Court may direct the trial Court to decide the application filed by the Petitioner for condonation of delay and the application filed under Section 12 (5) of the Arbitration and Conciliation Act expeditiously.

9] Needless to state that as already execution proceedings are filed, the trial Court shall decide the said applications as expeditiously as possible.

[DR.SHALINI PHANSALKAR-JOSHI, J.]