

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION****COMMERCIAL ARBITRATION PETITION (L)NO.1578 OF 2018**

Sustainable Agro-commercial Finance Limited

...Petitioner

Versus

Ashok Tatoba Magdum And Anr

...Respondents

Mr.Yashpal M.Thakur, for the Petitioner.

None for the Respondents.

CORAM : G.S. KULKARNI, J.**DATE : 13th DECEMBER, 2018**

PC:

1. Heard the learned Counsel for the petitioner. The learned Counsel for the petitioner has stated that the respondents have accepted service of the petition and an affidavit of service to that effect is placed on record. However, none appears for the respondents.

2. In seeking reliefs in this petition as filed under Section 9 of the Arbitration and Conciliation Act,1996 (for short 'the Act') learned Counsel for the petitioner submits that the disputes between the parties are subject matter of arbitration before sole arbitrator Mr.Anil R. Mehta.

3. My attention is drawn to the order dated 26 April 2018

passed by the learned Arbitrator under Section 17 of the Act which was in the following terms:-

- “1. Application is allowed.
2. The Respondents, their agents, servants and any other persons claiming through them are hereby restrained from disposing, dealing selling, alienating, transferring or creating third party right, claim, title or interest or acting in any manner whatsoever with the mortgaged property bearing Gat/Survey No.1120, area (H.R.) 0.81 at Village Takali, Shirol, Dist. Kolhapur, Gat/Survey No.1121, Area (H.R.) 0.33.75 at Village Takali, Shirol, Dist.Kolhapur, during the pendency and final disposal of the present Arbitration proceedings No.ARB/SUS/AGRO/01/2017 filed by the Claimant before the Arbitral Tribunal.
3. No order as to costs.”

3. Thereafter a final award came to be delivered on 3 December 2018 whereby the claim of the petitioner was accepted and the counter-claim as made by the respondents was rejected. The respondents are directed to pay the petitioner an amount of Rs.2,00,00,477/- alongwith interest at the rate of 18% per annum on the said claim amount as also a direction awarding cost of arbitration of Rs.7,34,495/-. The learned Counsel for the petitioner states that the deed of mortgage dated 23 May 2014 was executed by the respondents in favour of the petitioner qua the property, details of which are set out in prayer clause (a). It is submitted that the petitioner apprehends that the respondents may create some third party rights and thus approached this Court by the present petition making following prayer:-

- “(a) Pending the hearing and final disposal of the present Petition, the Respondents by themselves and/or through their servant and/or agent and/or in any manner

howsoever be inducted from directly or indirectly, dealing, selling, offering for sell, transferring, parting with possession, alienating, encumbering, pledging or in any manner creating any third party rights and/or encumbrance in respect of the assets of the Respondents particularly the property situated at Gat/Survey No.1120, area (H.R.) 0.81 at Village Takali, Shirol, Dist.Kolhapur and Gat/Survey no.1121, Area (H.R.) 0.33.75 at Village Takali, Shirol, Kolhapur together with all buildings, structures, erections etc. standing thereupon or to be constructed thereon, both present and future as well as the plant and machinery attached to the earth or permanently fastened or anything attached to the earth, fixtures and fittings erected/installed or to be erected/installed thereon and every part thereof is hereby referred mortgaged property as described in the Schedule annexed to the Deed of Mortgage dated 23rd May 2014;”

4. Having heard the learned Counsel for the petitioner and having perused the documents on record, in my opinion, it would be in the interest of justice that the protection as prayed for in terms of prayer clause (a) is granted to the petitioner pending the execution of the award, which the petitioner proposes to institute as per the provisions of Section 36(1) of the Act.

5. In the above circumstances, the petition is disposed of in the following terms:-

ORDER

(I) There shall be interim relief in terms of prayer clause (a) till the execution of the award dated 3 December 2018 passed by the learned Sole Arbitrator.

(II) The above order shall be subject to the orders which would be passed

in the petition which the respondents may file under Section 34 of the Act in assailing the award of the sole arbitrator dated 3 December 2018.

(III) Needless to observe that all the contentions of the parties on any pleas that the party may take in the petition under Section 34 of the Act, are expressly kept open.

6. Petition is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]