

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 83 OF 2019

1.Magic Motors & Ors.

...Petitioners

Versus

Bajaj Finance Ltd.

...Respondent

Mr.Mayur Bagla i/b. Avinash Fatangare, for the Petitioners.

Mr.Manoj Prajapati with Mr.Chinmay Gupte & Mohit Gadkari i/b. Mohit Gadkari & Co., for the Respondent.

CORAM : G.S. KULKARNI, J.**DATE : 18 July 2019**

P.C.

1. Heard learned Counsel for the petitioners and learned Counsel for the respondent.

2. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act,1996 (for short 'the Act') by the petitioners being aggrieved by the interim order dated 30 April 2019 passed by the learned sole Arbitrator on an application filed under Section 17 of the Act by the respondent-claimant. By the impugned order passed on the Section 17 application, the petitioners are directed to deposit an amount of

Rs.15,75,000/- as received by the petitioners from one Mr.Dattu Raghunath Hadpe, the licensee to be deposited within two weeks from 3 May 2019 in an escrow account to be maintained by Mohit Gadkari and Company (Advocate for the claimant) to be maintained in the escrow account till the final award.

3. Learned Counsel for the petitioners submits that the learned Arbitrator has proceeded on an erroneous premise and has taken into consideration the amount of rent/compensation received by the petitioners in respect of the suit premises prior to April,2012 that is the period prior to the loan agreement in question being entered between the parties. It is submitted that the amount would be lower amount if it is to be taken from the date of the loan agreement.

4. The learned Counsel for the respondent has disputed the contention as urged on behalf of the petitioners. It is his submission that there is complete suppression on behalf of the petitioners of any third party rights/tenancy in respect of the premises on the date the petitioner mortgaged the suit property in favour of the respondents. It is submitted that the conduct of the petitioners is dishonest and squarely reflected in the

averments as set out in the petition.

5. Having heard the learned Counsel for the parties and having perused the impugned order and the documents which are placed on record and from what has transpired before the Court at the earlier hearing, the petitioners are now willing to deposit an amount of Rs.11,50,000/- on the basis that this would be the appropriate amount of rent for the period from 30 April 2012 to December 2018, as received by the petitioners from the said premises. It is stated that after December,2018 as already placed on record before the arbitral tribunal, no rent has been received by the petitioners from the said premises. It is submitted that the petitioners be permitted to deposit an amount of Rs.11,50,000/-.

6. Considering that the impugned order is an ad-interim order passed on the Section 17 application and as the parties are already before the arbitral tribunal and the rights of the parties would be adjudicated in the arbitral proceedings, it is in the interest of justice that the impugned ad-interim order passed by the learned Arbitrator be modified by directing the petitioners to deposit the amount of Rs.11,50,000/- instead of an

amount of Rs.15,75,000/-, in the escrow account. However, it is clarified that this is strictly without prejudice to the rights and contentions of the parties and such further orders which may be passed on such appropriate material before the Arbitral Tribunal.

7. The deposit of the said amount has no reflection on the merits of Section 17 application or on the merits of the issues pending before the arbitral tribunal. The amount be deposited in the escrow account within four weeks from today as directed by the arbitral tribunal.

8. With the above modification of the impugned order, the petition is disposed of. All contentions of the parties on merits are expressly kept open.

9. Learned Counsel for the petitioners would fairly state that his clients would co-operate in early disposal of the arbitral proceedings. The arbitral tribunal shall make an endeavour to dispose of the proceedings as expeditiously as possible in any case within a period of six months from today.

(G.S.Kulkarni, J.)