

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

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.207 OF 2017

WITH

NOTICE OF MOTION NO.146 OF 2017

Car Mart Private Limited & Ors.)....Petitioners

V/s.

Bombay Mercantile Co-operative Bank)
Limited & Anr.)....Respondents

WITH

COMM. ARBITRATION PETITION NO.321 OF 2017

Roop Narain Sah)....Petitioner

V/s.

Bombay Mercantile Co-operative Bank)
Limited & Anr.)....Respondents

Mr.Nitin Thakkar, Senior Advocate a/w Rohit Gupta, Ms.Nidhi Singh I/by M/s.Legasis Partners for petitioners in CARBP No.207/2017 and for respondent nos.2, 3(A), 3(B) and 4.

Mr.Rohaam Cama a/w Mr.T.N.Tripathi and Mr.Alok Mishra I/by T.N.Tripathi and Co. for respondent no.1 in CARBP 207 of 2017 and for respondent nos.1 & 5 in CARBP 321 of 2017.

Mr.Y.V.Divekar a/w Ms.Sayali and Mr.Rohan Karande I/by M/s.Divekar and Co. for respondent no.2 in CARBP 207 of 2017 and for petitioner in CARBP 321 of 2017.

**CORAM : K.R.SHRIRAM,J
DATE : 10.4.2019**

P.C.:-

COMM.ARBITRATION PETITION NO.207 OF 2017

1. Heard the counsel. Petition requires consideration.
 2. Therefore, Admit, returnable on 4.7.2019 for final hearing.
 3. The Arbitrator to forward entire record & proceedings.
- Mr.Thakkar, senior Advocate for petitioners states that on an earlier occasion, counsel has stated that the Arbitrator has handed over record & proceedings to respondents. Mr.Cama for respondent no.1 states if that is so, respondents will file entire record & proceedings under advise to petitioner.

NOTICE OF MOTION NO.146 OF 2017

4. Mr.Thakkar states his client has no money to deposit or secure the claim for a stay and therefore, seeks leave to withdraw the Notice of Motion with liberty to file a fresh Notice of Motion as and when his client is able to arrange some money.
5. Notice of Motion dismissed as withdrawn with liberty as prayed for.

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6. In view of the above, this petition also stands admitted and returnable on 4.7.2019 for final hearing.

NOTICE OF MOTION (L) NO.208 OF 2017

7. Mr.Divekar for petitioner states that the question of petitioner depositing any money does not arise since the mortgaged flat which belongs to his client, is in possession of respondent. I have to also note that Mr.Divekar at the beginning has made a statement that his client is owner of the flat and his client has mortgaged the flat and he has no objection for the flat being sold.

Mr.Cama states that on the application of petitioner in Arbitration Petition No.207 of 2017, Debt Recovery Tribunal has stated that respondent can go ahead and sell the premises but the sale should not be confirmed till further orders and therefore, respondent-bank is unable to recover any money. Mr.Cama states that the loan was given way back in 1993 and the bank is still to recover even a penny.

Therefore, respondent is permitted to go ahead and sell the premises, appropriate the sale proceeds upon respondent filing an undertaking in this Court with copy in DRT proceedings, that they shall bring back the entire sale proceeds to this Court within 4 weeks, if such an order is passed with interest thereon at 6.5% p.a.

8. Mr.Thakkar states that the flat cannot be sold but Mr.Thakkar also states that his client has no money to secure even a part of the petitioner's claim. At this stage, Mr.Thakkar states, when the Court recorded his statement that his client has no money to deposit, based on which he withdrew his Notice of Motion with liberty to file fresh one as and when his client will come up with some security, his client will deposit Rs.91,00,000/-. The offer is rejected because Rs.91,00,000/- is principal amount that was payable in 1996 and Mr.Thakkar's client has also stood as guarantor. Admittedly, large amounts are payable to respondent no.1. I must note the dishonest stand of Mr.Thakkar's client in as much as on the one hand petitioners withdrew the Notice of Motion for stay when Court said deposit part of the claim saying she has no money, but when Court directed sale of the property offered to deposit a measley amount of Rs.91,00,000/-.

9. Notice of Motion accordingly disposed.

10. All rights and contentions of the parties are kept open.

(K.R.SHRIRAM,J)