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

COMMERCIAL CONTEMPT PETITION (L.) NO.103 OF 2019

L & T Housing Finance Ltd.	..Petitioner
Vs.	
Balaji Infrastructure & Ors.	..Respondents

Mr.Udayan Shah with Ms.Kajal Solanki i/b. M/s.Divya Shah Associates
for Petitioner.

Mr.Pandit Kasar for Respondent No.4.

CORAM : G.S. KULKARNI, J.

DATE : 27th JUNE, 2019

P.C.:

Heard Mr.Shah, learned Counsel for the petitioner, and Mr.Kasar,
learned Counsel for respondent No.4.

2. The petitioner has alleged that the respondent has committed a willful disobedience of the order dated 3 May, 2019 passed by this Court as also there is an intentional disobedience by noncomplying the orders dated 4 May 2018, 28 June 2018 and 27 July 2018 passed by this Court in Commercial Arbitration Petition (L.) No.503 of 2018. There is also a prayer that the respondent not having deposited an amount of Rs.1 Crore as directed by the arbitral tribunal, should be directed to comply with the said order. There is also a prayer that there should be a

direction of this Court that all the orders should be complied with by the respondent. There is a further prayer that the respondent be directed to purge contempt and there is a final prayer that having committed contempt of these orders, the respondent be committed to civil prison.

3. At the outset, it needs to be noted that the order dated 4 May 2018 was passed by this Court as an ad-interim order on a Section 9 petition [Arbitration Petition (L.) No.503 of 2018] filed by the petitioner which reads as under:-

“

ORDER

1. The Respondents to file their Affidavit in Reply within a period of one week from today.
2. The Respondents shall until further orders not sell any premises without seeking permission of the Court. In the event of the Defendants receiving any monies towards balance sale consideration from any of the flat purchasers, they shall deposit the same in the escrow account and not in any other account. The Respondents shall not withdraw any amount from the said escrow Account.

Stand over to 14th May, 2018.”

4. The above order passed by this Court ultimately culminated into a final order passed on the said Section 9 petition being order dated 27 July, 2018, wherein in paragraph 2, the Court while appointing an arbitrator directed that until the learned arbitrator passes any further orders, the orders passed by this Court, shall continue. Paragraph 2 (iii) of the said order reads thus:-

“2. Pursuant thereto, Mr. Minoo Siodia, Advocate has filed his disclosure under Section 11 (8) read with Section

12 (1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) on or before 27th July, 2018. In view thereof, the following order is now passed, by consent :-

(i) Mr. Minoo Siodia, Advocate is appointed as the sole Arbitrator to decide the disputes between the parties arising out of the Loan Agreement dated 5th May, 2016

(ii) The above Petition under Section 9 of the Act shall be treated as a Petition under Section 17 of the Act and decided by the Learned Arbitrator at the earliest.

(iii) Until the Learned Arbitrator passes any further orders, the orders passed by this Court, shall continue.

(iv) The Advocate for Respondent Nos.1 to 3 on instructions from Respondent Nos.1 to 3 states that they shall before the Arbitrator submit to an Award in the sum of Rs.8 Crores with 12% interest from the date of Award until realization.

(v) As far as the balance claim is concerned, the same shall be decided by the Learned Arbitrator. The Learned Arbitrator shall also decide the rate of interest payable to the Petitioner until passing of the Award.

(vi) Parties are at liberty to move the Learned Arbitrator for interim/ad-interim reliefs.

(vii) The venue of arbitration shall be at Mumbai.

(viii) The Learned Arbitrator shall endeavour to pass his final Award within a period of six months from today. The Learned Arbitrator shall not grant adjournment/s to the parties unless absolutely necessary.

(ix) The parties and/or their Advocates shall appear before the Learned Arbitrator in his Chambers on 31st July, 2018 at 5.00 p.m. and obtain necessary directions.

(x) The cost of arbitration shall initially be borne by the parties equally.

(xi) All contentions of the parties are kept open.

(xii) Liberty to apply.

3. In view of this order, the above Arbitration Petition is disposed off.”

(emphasis added)

5. It is not in dispute that the parties are before the arbitral tribunal and various meetings were held by the arbitral tribunal. Statement on behalf of the respondents to that effect also came to be recorded in paragraph 20 of the Minutes of the Meeting dated 18 March 2019 to be

continued by the respondents till the disposal of the arbitral proceedings, as noted by the arbitral tribunal in paragraphs 6 and 7 of the Minutes of the Meeting dated 3 May 2019.

6. On 3 May 2019, the arbitral tribunal has published an interim award to the effect that respondent Nos.2 and 3 to the arbitral proceedings are directed to pay an amount in the sum of Rs.8 Crores to the petitioner/claimant within a period of four weeks from the date of passing of the said interim award and in the event of failure to make payment of the said amount, the amount shall carry an interest of 12% p.a. till payment.

7. The principal grievance of the petitioner that the interim award is not being complied by the respondents which has compelled the petitioner to invoke the contempt jurisdiction of this Court.

8. Considering the facts of the case, in my opinion, contempt proceedings cannot be resorted to by the petitioner to execute the interim award as rendered in arbitral proceedings, when a remedy of execution of the award is available to the petitioner considering the clear provisions of Section 31(6) read with Section 36(1) of the Arbitration and Conciliation Act, 1996.

9. In so far as contention of the petitioner that there is a contempt of the order dated 4 May 2018 passed by this Court also cannot be accepted as ultimately the said order culminated into the final order dated 27 July 2018 passed by this Court in Commercial Arbitration Petition (L.) No.503 of 2018. It is clear from a plain reading of direction as contained in paragraph 2(iii) of the said order dated 27 July 2018, that until the Learned Arbitrator passes any further orders, the orders passed by this Court, were to operate. Admittedly, there are further orders which are passed by the arbitral tribunal and in fact a further interim award. Thus the contention of the petitioner that there is contempt of the order passed by this Court cannot be accepted. There is no merit in the contempt petition. It is accordingly rejected, however, with a liberty to the petitioner to adopt appropriate proceedings for execution of interim award. No costs.

[G.S. KULKARNI, J.]