

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION IN COMMERCIAL DIVISION MATTERS
LODGING NO. 2284 OF 2019
IN
COMMERCIAL ARBITRATION PETITION LODGING NO.746 OF 2019

Jabbir Gulam Rasool Jamal and Anr. ... Applicants

V/s.

M/s. Radio Restaurant ... Respondent

Mr. Subhash Jha a/w. Mr. H.K. I.by M/s. Law Global for the applicants.

Mr. Simil Purohit a/w. Mr. Vishal Raman I.by Mr. A.A. Jain for the respondent no.1.

Mrs. R.U. Karunatkar, Section Officer, Court Receiver.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 27th SEPTEMBER 2019.

P.C. :

. Heard respective counsel.

2. In fact, this matter is taken on board before this Court since the Hon'ble Justice R.D. Dhanuka had passed an order of not before the Court presided over by Hon'ble Justice R.D. Dhanuka.

3. By an order dated 30th August 2019, while decided the Arbitration Petition, Justice Dhanuka passed the following direction:-

a) The relief granted by the learned arbitrator in paragraph 21(iv) of the arbitral award is set aside. Rest of the award dated 7th January, 2019 and order dated 16th April, 2019 is upheld. It is made clear that the petitioners would be entitled to adjust the amounts already deposited by the petitioners as and by way of agency commission with the Court Receiver with accrued interest thereon while making payment of other monetary reliefs granted by the learned arbitrator in paragraph 21(ii), (iii), (v) and (vii). The petitioners would be also entitled to adjust the amount awarded by the learned arbitrator in favour of the petitioners in paragraph 21 (vi) of the arbitral award.

b) Court Receiver, High Court of Bombay is directed to take vacant possession of the suit premises from the petitioners and handover the same to the respondent no.1 within four weeks from today.

c) The Court Receiver, High Court, Bombay to stand discharged after the petitioners complying with the directions issued in paragraph 21(i) of the arbitral award and after petitioners withdrawing the amount lying deposited with the Court Receiver in terms of paragraph 21 (iv) of the arbitral award. Court Receiver to permit the petitioners to withdraw the amount after obtaining possession of the suit premises from the petitioners.

d) Commercial Arbitration Petition (Lodging) No.746 of 2019 is partly allowed. In view of disposal of the Arbitration Petition, Notice of Motion (Lodging) No.1727 of 2019 does not survive and is accordingly disposed off.

e) There shall be no order as to costs.

f) All parties as well as the Court Receiver to act on the authenticated copy of this order.

4. It appears from the records that after passing of the order, the learned counsel for the Petitioner had sought stay to the order passed by the Court. However, Justice Dhanuka had turned down the said request in the following words:-

“Since this Court has already directed the Court Receiver to take vacant possession of the suit premises from the petitioners and handover the same to the respondent no.1 within four weeks from today, I am not inclined to grant stay of the order passed by this Court. Application for stay is accordingly rejected”.

5. The learned counsel for the applicants submits that the applicant was not well on account of viral fever and had to remain confined to bed for almost 10 days and the recuperating process, then took equal number of days and therefore, the process of seeking opinion from the concerned advocates for the course of action to be taken in the matter after the order dated 30th August 2019, was delayed.

6. The applicant has approached this Court at the Fag end of the limitation which was granted for vacating the premises and no certificate is annexed to the petition showing that the petitioner could not approach the Court prior to 24th September 2019.

7. Since the affidavit was affirmed on 24th September 2019, that is just filed few days before the period for vacating the premises was granted, it cannot be said to be a plausible explanation for approaching the Court at the last moment. The matter was circulated

on 25th September 2019. The learned counsel for the respondent had drawn the attention of this Court to para 72 of the order dated 30th August 2019 which reads as follows:-

“72. Insofar as the relief granted in paragraph 21(i) of the arbitral award directing the petitioners to hand over vacant and peaceful possession to the respondent no.1 is concerned, a perusal of the grounds raised by the petitioners clearly indicates that there is no challenge to that part of the award. The only grounds raised in the arbitration petition insofar as the possession is concerned, are that the learned arbitrator could not have declared the petitioners in wrongful use and occupation of the suit premises. Learned senior counsel for the petitioners even during the course of argument did not raise any issue as to why his clients could not be directed to hand over vacant and peaceful possession of the suit premises to the respondent no.1.”.

8. Moreover, the fact that Justice Dhanuka had refused to stay the order there would be no reason for granting extension of time to vacate the premises. Hence, this Court is not satisfied with the reason assigned by the applicant. Hence the application seeking extension of time stands rejected.

(SMT. SADHANA S. JADHAV, J)