Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1 OF 2019
IN
ARBITRATION PETITION (L) NO. 1250 OF 2019

Sayed Azazur Rahman And Anr ...Applicants/ Petitioners

Versus

NKGSB (North Kanara Gaud Saraswat Bank) Cooperative Bank Ltd ...Respondent

---

Mr Sayed R Rahman, *Applicant in person.*

CORAM: G.S. PATEL, J.
DATED: 20th November 2019

PC:-

1. Heard. The applicant appears in person in support of his application for interim relief. The challenge petition under Section 34 and the interim application are said to have been served. I am shown a tracking report and correspondence including a letter of 15th November 2019. There is no acknowledgement stamp on the letter of 15th November 2019 but the tracking report confirms that an item was delivered to the addressee on 16th November 2019. In addition the applicant points out that he hand-delivered the arbitration petition and interim application to the Deputy General Manager of the Respondent at its Girgaum office on 14th November 2019 and obtained an acknowledgement stamp. The Respondent is absent though served. The matter is listed on the daily board. An Affidavit of Service is to be filed within one week from today enclosing these documents.

2. The challenge is to an arbitral award dated 18th July 2019 rendered by Mr SV Timekar, an arbitrator appointed by the Central Registrar, New Delhi under the Multi State Cooperative Societies Act 2002. The arbitration was invoked by the present respondent i.e. the NKGSB Cooperative Bank Limited under Section 84 of that Act. The bank sought an award against the present applicant and his spouse who were opponents Nos. 1 and 2 in the arbitration. The case was that on 12th October 2012 the two applicants approached the bank for a loan of Rs. 12 lakhs from its Kharghar branch. This was a housing loan for the purchase of a residential accommodation in the CIDCO command area. After considering documents, the bank sanctioned the loan. There is a sanction letter of 17th November 2012. Both applicants are members of the bank, i.e. they have accounts with the bank. They executed various security documents on 27th November 2012 including a demand promissory note, a term loan agreement, an equitable mortgage and an authorisation under Section 60 of the MSCS Act 2002. The bank claimed it disbursed the loan to the two opponents. The loan was repayable in 240 monthly instalments of Rs.13,500/- each on or before 20th December 2032 with interest at 12% per annum.

3. The bank claimed that the opponents defaulted. It invoked arbitration. The respondents contested. They filed a counter-claim. While this was entertained in the sense it is taken up, heard and considered, ultimately by the impugned award the learned sole arbitrator dismissed the counter claim. He allowed the bank's claim in the amount of Rs. 12,76,582/- with interest and then also made an award of Rs. 15,500/- plus another Rs. 5,000/- as arbitration charges and administrative costs.

4. One petition challenges the dismissal of the counter claim. The other challenges the grant of the bank's claim in this arbitral award.

5. The challenge is along the same lines that the petitioners took before the arbitral forum. First, that the bank had not in fact made any disbursement to the opponents at all but had directly transferred the entire amount to the developer. That developer was guilty of various illegalities including having effected multiple sales of the same flat and illegal constructions. CIDCO demolished the flat and therefore the opponents said they were not liable to make repayment. Then the argument is that the entire loan transaction is void, or, at any rate, voidable. It is alleged that there is a fraud, though it is not specified of what the fraud precisely might be. It is contended that the bank could not have acted as it did and that this was in contravention of RBI guidelines and master circulars. It is said that the bank should itself have verified the legality of the structure by an independent architect before disbursing the loan. Not having done so, the petitioners cannot be liable to the bank.

6. In the interim application, the reliefs sought are these:

(a) Pending the hearing and final disposal of the present petition no. O.S. ARBPL/1250/2019, this Hon'ble Court may be pleased to unconditionally stay the enforcement of the impugned Award dated 18th July 2019.

(b) Hon'ble Court may be pleased to put a stay on any fund transfer from any of the petitioners bank accounts that have been seized/attached by the respondent.

(c) Hon'ble Court may be pleased to stop the respondent from seizing any other bank account or approaching Dr. Mhejabeen Sayed's petitioner no. 2's employer B.A.R.C. for recovery.

(d) Hon'ble Court may be pleased to stop the respondent from taking any further action towards enforcement of the award, e.g. deliberately bouncing of a check etc.

(e) Such other and further relief as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the instant case.

7. Having regard to these circumstances, it is difficult to see how there can be unconditional stay. Prayer clauses (a), (b) and (c) cannot be unconditionally granted. Should the two challenge petitions fail, the bank should not have to undergo further litigation to recover its dues in enforcement. Prayer (d) seems to be me entirely fanciful and there is no evidence supporting it. It might be an inevitable result if accounts are frozen and despite knowledge of such a freezing the applicants persist in writing cheques on that frozen account.

8. The only manner in which relief under clauses (a), (b) and (c) can be even considered or moulded is if the applicants make a statement that they are, on a without prejudice basis, willing to deposit the entire arbitral amount with interest up to the date of the filing of the challenge petitions with the Prothonotary and Senior Master. Should this be done, as a matter of furnishing security, then certainly a question of stay can be considered and the arbitration petitions can be heard on merits. But the prayer itself is for an unconditional stay and that I think is beyond contemplation. Had this been a regular appeal in a civil suit, such a deposit would have been mandatory. I see no reason why a challenge petition in arbitration should receive more lenient treatment.

9. As an additional indulgence to the petitioner, I will, however, direct that if the petitioner makes a deposit with the Prothonotary and Senior Master at any time before 16th December 2019 of the entire amount of the award with interest up to the date of filing of the Section 34 petitions, there will be a stay on execution and enforcement of the impugned award dated 18th July 2019. Should that deposit be made, the matter will be listed on 19th December 2019 along with the arbitration petitions under Section 34 for admission. Parties are put to notice that an effort will be made to dispose of the Section 34 petitions finally at the stage of admission.

10. Should the deposit not be made on or before 16th December 2019, the Section 34 petitions will be listed in the normal course for admission.

(G. S. PATEL, J)