

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

COMMERCIAL APPEAL (L) NO.522 OF 2019
IN
COMM. ARBITRATION PETITION (L) NO.851 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019
IN
COMMERCIAL APPEAL (L) NO.522 OF 2019

Earthcon Constructions Private Limited	..Appellant
Versus	
Beacon Trusteeship Limited & Ors.	..Respondents

WITH
COMMERCIAL APPEAL (L) NO.528 OF 2019
IN
COMM. ARBITRATION PETITION (L) NO.1264 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019
IN
COMMERCIAL APPEAL (L) NO.528 OF 2019

Earthcon Universal	
Infratech Private Limited & Anr.	..Appellants
Versus	
Beacon Trusteeship Limited & Ors.	..Respondents

Mr. Farukh Khan a/w Ms. Shantala Sankrit i/by Chirag Chanani,
Advocates for the Appellants.

Mr. Vishal Kanade a/w Mr. Vikrant Zunjarrao, Mr. Abhishek Adke &
Mr. Rohan Bangar i/by Zunjarrao & Co., Advocates for the
Respondents.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 18th NOVEMBER, 2019**

P.C.

1] Petition filed by Respondent Nos.1 and 2 under Section 9 of the Arbitration and Conciliation Act, 1996, pleads that Defendant Nos.1, 2 and 3 are companies incorporated under the Companies Act that Defendant No.1 availed financial facilities from the Plaintiffs. A Debenture Trust Deed as also Mortgage Deeds in favour of Debenture Trustee were executed. Pleading that there was default in honouring the debentures a sum of ₹ 63,41,53,440/- had become due. The directors of the first three Respondents were impleaded on the plea that they had stood as guarantors.

2] On 17th September 2019 recording that the so called security in the form of 205 flats was paper asset inasmuch as the entire project is at standstill nor environmental clearance qua these buildings obtained, learned Single Judge restrained Respondent Nos.4 and 5 in terms of prayer (b) and restrained Respondent Nos.3 to 6 in terms of prayers (c) and (d). Said order has been challenged in Commercial Appeal (L) No.522 of 2019.

3] Thereafter an order was passed on 17th October 2019 which has been challenged in Commercial Appeal (L) No.528 of 2019. The said order reads as under :-

“1] Learned counsel for the respondents makes a statement that the respondents are taking all steps to comply with the order dated 17th September, 2019, passed by this Court in Commercial Arbitration Petition (L) No.851 of 2019 and he will also instruct all their bankers that they shall not make any payment from any of its bank accounts. Statement is accepted.

2] Reply, if any, to be filed before the next date of hearing and copy of the same be served on the learned advocate for the Petitioner well in advance.

3] Stand over to 14.11.2019.”

4] Faced with the order dated 17th October 2019 which records the undertaking by counsel for the Respondents to comply with the order dated 17th September 2019, learned counsel for the Appellants submits that Occupancy Certificate has been obtained for three towers and the same would be marketable tangible asset but learned counsel simultaneously concedes to the point that this aspect was not brought to the notice of the learned Single Judge.

5] Suffice it to state that interim measure directed by the learned Single Judge is to secure the amount claimed by the Applicants before the learned Single Judge pending resolution of the dispute before the Arbitrator. Principles analogous to Order XXXVIII Rule 5 of the Code of Civil Procedure would be applicable. Meaning thereby, if the Respondents can offer a security to satisfy claim if the decree by the learned Arbitrator, the learned Single Judge would be empowered to modify the interim orders passed.

6] Thus, both Appeals are disposed of declaring that upon the Appellants filing an application or an affidavit in the pending proceedings before the learned Single Judge showing tangible assets having liquid value to protect the sum claimed, the learned Single Judge would pass appropriate an order on the application or with reference to the affidavit.

7] All pending applications are disposed of accordingly.

**Balaji G.
Panchal**

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Balaji G. Panchal
Date: 2019.11.18
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE