

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 699 OF 2022

Meena Kumar Rohra ...Appellant

V/s.

Unity Small Finance Bank Limited ...Respondent

Mr. Rajendra Pai a/w. Mr. Ajit Makhijani, Mr. Akshay Pai and Ms. Samiksha Manek i/b. M. M. Legal Associates, for the Appellant.
Mr. Ramesh Dube Patil a/w. Ms. Amruta Kundap i/b. Mr. Jay and Co., for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 5 AUGUST 2022

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P.C.

1. The challenge in this appeal, is to the order dated 9 May 2022 passed by the learned City Civil Court in Draft Notice of Motion in Suit (Stamp) No.5213/2022. By the impugned order, the learned City Civil Court has refused to grant ad-interim relief of injunction restraining the continuation of the arbitration proceedings initiated by the first Respondent – Bank.

2. I have heard Mr. Pai, the learned Senior Counsel for the Appellant and Mr. Patil, learned counsel appearing for the first Respondent – Bank. With the assistance of the learned counsel for the parties, I have gone through the record.

3. It is submitted by the learned Senior counsel for the Petitioner that the ad-interim relief has been refused only on the ground that the Petitioner has appeared before the learned Arbitrator and subjected to the jurisdiction of the learned Arbitrator. He submitted that there are several other contentions raised on behalf of the Petitioner including based on the decision of the Supreme Court in *Vidya Drolia and Ors. Vs. Durga Trading Corporation* ¹ in which the Supreme Court has held that the disputes which are not arbitrable, the arbitration proceedings cannot be continued. It is submitted that all these contentions have not been considered while refusing to grant ad-interim relief.

4. The learned counsel for the Respondent points out that an objection was raised on behalf of the Petitioner before the Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996 challenging the jurisdiction of the Arbitral Tribunal and that application has been rejected. He submits that the Petitioner has appeared before the Arbitrator, filed reply and now the matter is fixed for cross examination of the witness of the Respondent No.1. He therefore submitted that the Petitioner has subjected to the jurisdiction of the Arbitrator and the ad-interim relief is rightly rejected.

5. I have carefully considered the rival circumstances and the submissions made.

¹(2021) 2 SCC 1

6. A perusal of the impugned order shows that the City Civil Court has refused to grant ad-interim relief on the sole ground that the Petitioner has appeared before the Arbitrator. In other words, the only ground on which the ad-interim relief is refused is that the Petitioner has subjected to the jurisdiction of the Arbitrator. It can be seen that the City Civil Court has not dealt with the other contentions including based on the decision of the Supreme Court in *Vidya Drolia and Ors. (supra)* . It transpires during the course of hearing that the notice of motion is coming up for hearing in the City Civil Court on 19 September 2022. The learned Senior counsel for the Petitioner made an alternate submission that hearing of the notice of motion may be expedited and liberty be granted to the Petitioner to request for preponement.

7. The learned counsel for the first Respondent has no objection for expediting the hearing of the notice of motion.

8. In that view of the matter, the appeal is disposed of. It will be open to the Appellant to move the City Civil Court for expedited hearing of the notice of motion by preponing the date. If such application / request is made, the City Civil Court shall hear and decide the notice of motion as expeditiously as possible and preferably within a period of four weeks' from the receipt hereof.

9. The parties are at liberty to produce additional documents / submissions, if any, before the learned City Civil Court.
10. The rival contentions of the parties, on merits, are left open.
In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.