

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

WRIT PETITION 3742 OF 2022

**PRIYA
RAJESH
SOPARKAR**

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Date: 2022.06.18
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M/s Jaanhavi Software
V/s.

... Petitioner

The Saraswat Co-operative Bank Ltd. and ors. ... Respondents

Mr.Sachin Gite, Advocate for the Petitioner.

Ms.Jagruti Bhise i/by Mr.Vivek V. Phadke, Advocates for Respondent
1.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 10, 2022.

P.C.:

1. The Respondent 1-Bank preferred an application under Section 9 of the Arbitration and Conciliation Act, 1996 ("Act") in which in paragraph 15 the Bank averred that it is about to invoke the arbitration proceedings, and that the non-applicant borrower may dispose of movable and immovable properties rendering the award infructuous. On such premise the Respondent 1-Bank sought interim measures.

2. The Respondent 1-Bank further preferred an application purportedly under Order VI Rule 17 seeking leave to amend the pleadings on the premise that certain errors had occurred inadvertently.

3. The Bank sought to incorporate the following paragraph :-

"15. The Applicant Bank states and submits that, the

Applicant Bank is about to invoke the Arbitration award execution Proceedings for Arbitration Case No ARB/SCB/PN/328 OF 2004 and the applicant Bank is confident to succeeds in the Arbitration award execution proceedings. However, before initiating the Arbitration award execution Proceedings there are chances to dispose off all the movable and immovable properties by the Respondent No.1 which will cause irreparable loss to the applicant Bank and filing of arbitration award execution proceeding would be infructuous. Hence it is necessary to seize and secure such movable and immovable property of Respondents by which the Applicant Bank can recover the loan amount."

4. What is discernible from the proposed amendment is that according to the Bank the award is already made, and that interim measures are sought pending proposed execution proceedings. The District Judge was pleased to allow the application vide order dated 5th July, 2019. Questioning the correctness of the order dated 5th July, 2019, the learned counsel for the Petitioner would submit that an admission is retracted and the defence that the alleged arbitration award is fabricated and back-dated is nipped in the bud.

5. It is difficult to agree with the submission of the learned counsel for the Petitioner. The fact that the Bank is permitted to incorporate certain pleadings does not mean that the correctness thereof is *prima facie* accepted. I note that according to the Bank the award is made in 2006. It is true that there is a document

on record as is highlighted by the learned counsel for the Petitioner, which is purportedly a communication from the Bank in which in the list of pending proceedings, a reference is to pending proceedings against the Petitioner herein. However, the Petitioner has already preferred an application under Section 34 assailing the purported award made in the year 2006. The contention of the Petitioner that no award was as a fact made can always be looked into on its own merits in an appropriate proceedings including the proceedings under Section 9 albeit the finding may be *prima facie* and restricted to decision of Section 9 application.

6. In my view no interference in writ jurisdiction is necessary and suffice it to observe that the fact that the amendment is allowed shall not influence the proceedings and every contention including the contention that as a fact no award is made and a back-dated award is pressed in service shall be duly considered on its own merit. Subject to observation supra, the Petition is disposed of.

(ROHIT B. DEO,J.)

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