

Santosh

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

**NOTICE OF MOTION NO. 2396 OF 2018
IN
COMM ARBITRATION PETITION NO. 478 OF 2017
WITH
COURT RECEIVER'S REPORT NO. 269 OF 2018**

Saloni Chaudhary & anr. Applicants
In the matter between
Kotak Mahindra Bank Ltd. ...Petitioner
Versus
Spotlight Tradecom Pvt. Ltd (In Liquidation)
& ors. ...Respondents

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Mr. Anand Poojari, a/w B. Kanchan, i/b S. I. Joshi & Co., for
the Petitioner.

Mr. Gobinda C. Mohanty, i/b Mohanty & Associates, for
Respondent nos.2 and 3 and for the Applicant in NM.

CORAM: N. J. JAMADAR, J.

DATED : 28th MARCH, 2022

PC:-

1. The learned Counsel for the applicant seeks leave to
tender the affidavit-in-rejoinder.

Affidavit-in-rejoinder is taken on record.

2. This Notice of Motion is taken out by respondent nos.2
and 3 seeking, *inter alia*, the recall of the order passed by this
Court on 22nd November, 2017, under Section 9 of the
Arbitration and Conciliation Act, 1996. Paragraphs 6 and 7 of
the order dated 22nd November, 2017, read as under:

“6. In view of the events that has transpired as mentioned above, in my view, the apprehension of petitioners that respondent nos.2 and 3 shall also eliminate their assets to defeat petitioners’ claim cannot be stated to be unfounded. Ms. Joshi states that at page-166 of the petition-Exh.6 are the list of movable and immovable properties of respondent no.3 as mentioned in his disclosure affidavit filed in Arbitration Petition Nos.62 of 2013 and 63 of 2013. Ms. Joshi is seeking an order for appointment of court receiver with respect to these properties as well. Though the court would have been hesitant to appoint court receiver straight away, in my view, considering the background of the matter and conduct of respondent nos.2 & 3, the balance of convenience is also in favour of petitioners and certainly petitioners’ right will be prejudiced further. Further, even today substantial amounts are payable by respondent to petitioners.

7. In the circumstances, order terms of prayer clause-(a) is granted.”

3. The applicants / respondent nos.2 and 3 assert that the aforesaid order had been obtained by suppression of facts and, therefore, deserves to be recalled.

4. This submission is controverted on behalf of the petitioner.

5. At this stage, it is imperative to note that arbitration has already been invoked and the Arbitral Tribunal is seized with the matter. The learned Counsel for the petitioner submits that the matter is now posted for recording the evidence of petitioner’s witness. Mr. Joshi, the learned Counsel for the petitioner invited the attention of the Court to an order passed by this Court on 27th September, 2018 in Court Receiver’s Report No.269 of 2018 in Commercial Arbitration Petition No.478 of 2017, whereby the parties were directed not to seek any adjournment and the learned Arbitrator was also requested not to grant any adjournments to the parties unless absolutely

necessary and dispose of the arbitration proceeding expeditiously.

6. In view of the aforesaid developments, the proper course would be to decide the arbitration proceedings pending before the learned Arbitrator expeditiously. The interim order passed by this Court on 22nd November, 2017, is in operation for almost 4 and ½ years. In the facts and circumstances of the case, it would therefore be expedient to dispose of this Notice of Motion as well as the arbitration petition by making the petition absolute in terms of prayer Clause (a), granted by this Court by order dated 22nd November, 2017, with a direction to the learned Arbitrator to decide the pending arbitration proceedings within a period of four months from the date of communication of this order.

7. The Court Receiver shall continue to be appointed till the disposal of the arbitration proceedings, and take requisite steps to execute the commission.

8. Ordered accordingly. Notice of Motion No.2396 of 2018 and Commercial Arbitration Petition No.478 of 2017 stand disposed.

9. Court Receiver's Report No.269 of 2018 also stands disposed.

[N. J. JAMADAR, J.]