

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO.430 OF 2023

M.R. Chendilnathan

... Applicant

Versus

Jordan Dental Care Products Pvt
Ltd.

...Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO.257 OF 2023

Jordan Dental Care Products Pvt.
Ltd. Thr. Auth. Signatory Ganpat
Kapdi

... Applicant

Versus

M.R. Chendilnathan

...Respondent

**Mr Arjun F. Naik, Advocate for the applicant in
MCA/430/2023 and respondent in MCA/257/2023.**

**Mr S. M. Singbal, Advocate for the Respondent in
MCA/430/2023 and applicant in MCA/257/2023.**

**CORAM:
DATED :**

**PRAKASH D. NAIK, J
28th SEPTEMBER, 2023**

P.C.

1. The applicant in Miscellaneous Civil Application No.430 of 2023 has preferred Appeal under Arbitration Act No.4/2023 challenging the judgment and order dated 28.12.2021 passed by the learned Principal District Judge, North Goa, Panaji, dismissing the Arbitration Petition No.06/2018 wherein the Award dated 26.02.2018 passed by the Arbitral Tribunal was challenged. As per the award the appellant was held liable to pay an amount of Rs.6,84,449/- to the claimant towards outstanding amount against the goods supplied between the period 13.04.2006 to 22.09.2007. The appellant was held liable to pay interest from 14.08.2008 till the date of award. It was further directed that the entire amount as ordered shall be paid to the

claimant within 30 days from the date of receipt of the award failing which the same shall be liable to be paid with interest @18% from the date of the award till the date of actual payment. The appellant was also directed to pay the appellant an amount of Rs.2 lakhs towards cost of proceedings initiated before the Madras High Court and the High Court of Bombay by the claimants. The appellant was also directed to pay a sum of Rs.1,30,000/- as cost of the arbitration.

2. The appellant initially filed writ petition No.475/2023 before this Court challenging the said orders. Vide order dated 21.03.2023 leave was granted to the appellant to convert the petition into appeal under Section 37 of the Arbitration And Conciliation Act. Learned advocate appearing for the appellant, on instructions, made a statement that the entire awarded amount after adjusting the deposit already made before the District Court will be decided before the Executing Court within maximum period of 4 weeks from the date of the said order. The statement was accepted and the appellant was directed to act accordingly. Subsequently, vide order dated 07.06.2023 this Court had recorded that the entire awarded amount after adjusting the deposit already made before the District Court in terms of the order dated 21.03.2023 has been deposited before the Executing Court. The Executing Court was requested to postpone execution proceedings till further orders.

3. Miscellaneous Civil Application No.430/2023 is preferred by the appellant seeking modification of order dated 21.03.2023 to the extent that the applicant/appellant be permitted to

deposit only balance principal amount of Rs.2 lakhs awarded as cost towards the proceedings and Rs.1,30,000/- as cost of the arbitration proceedings awarded under Award dated 26.02.2018. Whereas, Miscellaneous Civil Application No.257/2023 is preferred by the claimant/respondent praying for vacation of the stay on the execution proceedings granted by this Court vide order dated 07.06.2023.

4. Learned advocate for the appellant submitted that the principal amount awarded in the impugned award was Rs.6,84,449/-. The said amount has been deposited before the Executing Court. On account of financial constraints the appellant is not in a position to deposit the amount towards the interest. The appellant/applicant would deposit an amount of Rs.2 lakhs which is towards the cost and Rs.1,30,000/- which is also towards of arbitration proceedings within stipulated time. Challenge to the award is pending in this Court. According to the appellant the entire amount including interest would be Rs.18,46,560/-.

5. Learned advocate for the claimant submitted that the interim relief granted by this Court should be vacated as despite statement being made before this Court that the entire award amount would be deposited, the appellant has not complied the statement. Stay has been obtained from this Court on the assurance that the entire amount would be deposited. The entire amount includes principal amount and interest. The appellant has miscalculated the amount towards the interest to be paid on the principal amount. As per the calculation of the

claimant the amount due with interest on the principal amount would be Rs.27,70,318/-. The statement of computation of award amount has been annexed to the application preferred by the claimant. Hence, the stay granted by this Court may be vacated.

6. It is not disputed that the principal amount awarded in the impugned award is Rs.6,84,449/-. The appellant has also submitted before this Court on 21.03.2023 that the entire awarded amount after adjusting the deposit already made before the District Court will be deposited before the Executing Court within four weeks. The contention of the appellant is that the entire principal amount has been deposited which is interpreted by the appellant as the awarded amount. The appellant is also willing to deposit Rs.2 lakhs and Rs.1,30,000/- stipulated in award dated 26.02.2018. The calculation arrived at by the appellant is for an amount as stated above, whereas, the respondent-claimant has disputed the calculation of the appellant.

7. Be that as it may, it is required to be noted that the award is under challenge in the appeal before this Court. Considering the factual aspects of the matter, I pass the following Order:-

ORDER

(i) The appellant/applicant shall deposit the amount of Rs.10 lakhs before the Executing Court within the period of 8 weeks from today towards the cost of Rs.2 lakhs, Rs.1,30,000/- and part interest.

(ii) The interim relief granted by this Court vide order dated 07.06.2023 shall continue till further orders.

(iii) In the event the amount is not deposited within the period of 8 weeks from today, the interim relief granted shall stand vacated without further reference to this Court.

(iv) Miscellaneous civil applications stand disposed of.

(PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
Date: 2023.09.28 16:57:15 +05'30'