

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 385 OF 2023**

Baban Dattu Apradh and Anr.

.. Petitioners

Versus

Shriram City Union Finance Ltd. and Ors.

.. Respondents

-
- Mr. Nagesh Y. Chavan for Petitioners
 - None for Respondents
-

CORAM : MILIND N. JADHAV, J.**DATE : JANUARY 31, 2023.****P.C.:**

1. Heard Mr. Chavan, learned Advocate for Petitioners.
2. Perused the impugned order dated 15.12.2022 passed below Exhibit-57 in Arbitration Regular Darkhast No. 1 of 2017.
3. Admittedly the facts in the present case are extremely gross and the Petitioners are guilty of dereliction. Nevertheless, Mr. Chavan has made an earnest effort to put forth the Petitioners' case.
4. The Execution proceedings have been filed for recovery of an amount of Rs.1,85,20,321/- by the decree holder by making an application for attachment and sale of the property of the Judgment Debtor (Petitioners). Mr. Chavan would submit that the original award dated 01.06.2017 came to be passed ex-parte without hearing the Petitioners and the same has been filed in execution. He would further submit that originally Petitioners borrowed an amount of

Rs.85,00,000/- out of which Petitioners have returned back an amount of Rs.61,39,042/-. However this aspect has to be decided in adjudication and or on merits which may not be open to the Petitioners at this stage considering the Award passed by the learned Trial Court.

5. Mr. Chavan would further submit that Petitioners are also in the process of challenging the ex-parte award by taking out appropriate proceedings which shall be filed in due course.

6. In the present Petition it is seen that, it is directed against the impugned order dated 15.12.2022. Petitioners in their application filed below Exhibit-57 pleaded before the executing Court that they have decided to sell their land admeasuring 4 Gunthas in order to pay the decretal amount as early as possible and sought reasonable time for the same.

7. Considering the request and plea of the Petitioners learned Court granted them some time. However considering that sufficient time was granted to Petitioners and Petitioners having failed to deposit the said amount it was submitted by the Petitioners before the Executing Court that somehow Petitioners have managed to accumulate an amount of Rs.75,00,000/- and the same shall be deposited at the earliest.

8. Record also indicates that Petitioners have not challenged the order dated 01.11.2022 passed below Exhibit-53 and the said order in

fact stands in the way of the Petitioners.

9. Mr. Chavan would submit that the said order has been challenged in the present Writ Petition. The learned Executing Court has come to the conclusion that the Petitioners are guilty of protracting the executing proceedings on some ground or the other despite granting reasonable time to them.

10. Mr. Chavan would submit that on 17.12.2022 Petitioners have deposited an amount of Rs.5,00,000/- which was the condition precedent granted by the learned Executing Court for not vacating the order dated 01.11.2022.

11. Mr. Chavan would submit that as directed by the learned Trial Court he has deposited the said amount of Rs.5,00,000/- within the stipulated time. In that view of the matter, he would submit that the order dated 01.11.2022 vacating the stay granted should remain stayed.

12. Considering that the deposit has now been made, as per the order dated 15.12.2022 the order dated 01.11.2022 below Exhibit-53 needs to be stayed subject to the learned Executing Court hearing the application below Exhibit-57 and passing an appropriate final order therein.

13. Considering the application made by the Petitioners below Exhibit-57, the learned Trial Court is directed to hear the said application finally and dispose of the same in accordance with law

after hearing all parties.

14. Mr. Chavan would submit that the stay granted by the learned Trial Court by the impugned order was until 16.01.2023 but the same was extended till today. Considering that on depositing of Rs.5,00,000/- and as observed above, it is directed that the said stay shall stand continued for a further period of four weeks from today.

15. All contentions of the parties are expressly kept open.

16. The learned Executing Court shall not be influenced by any observations made by this Court in the present order.

17. Writ Petition disposed.

[MILIND N. JADHAV, J.]