

Kavita S. J.

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

ARBITRATION APPEAL NO. 39 OF 2023

M/s EOS Lifescapes ... Appellant

Versus

Subhash Baburao Sanas ... Respondent

**WITH
INTERIM APPLICATION NO. 14713 OF 2023
IN
ARBITRATION APPEAL NO. 39 OF 2023**

Mr. Pankaj Sawant, Senior Counsel a/w Mr. Anshul Rawat, Mr. Anshuman R. Asare and Mr. Ankur Pahade, Advocates for Appellant.

Mr. R.D. Soni, Senior Counsel a/w Mr. Deepak More i/b Hemant Ghadigaonkar and Mr. Shivram Gawde, Advocates for Respondent.

CORAM : R.I. CHAGLA, J.

DATED : 3RD NOVEMBER, 2023.

ORDER :

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1. By this Arbitration Appeal, the Appellant is challenging the order dated 9th March, 2022 passed by the District Judge – 2, Pune

rejecting the Application of the Appellant under Section 9 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”). It appears from the impugned order that the Court held that the remedy of injunction for protecting the property in dispute under Section 9 of the Arbitration Act can be granted only prior to referring the matter to the Arbitral Tribunal.

2. The Court below in so holding has overlooked Section 9 of the Arbitration Act which specifically provides that “*A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a Court.....*” Thus, under Section 9, the application can be made at any time after making of the Arbitral Award. In view thereof, the Application made under Section 9 of the Arbitration Act after passing of the Arbitral Award in the proceeding filed under Section 34 of the Arbitration Act has erroneously been held to be not maintainable. The impugned order on this ground alone requires to be set aside.

3. However, it is not necessary for this Court to remand the matter back to the lower Court for considering the Application under Section 9 of the Arbitration Act given that there is an Application for

stay of the Arbitral award which has been filed by the Appellant herein and which is still pending before the lower Court. The Appellant may apply for interim relief as sought for in the Application under Section 9 of the Arbitration Act in the said Application for stay. In fact, in the Application under Section 9 which has been disposed of by the impugned order, the Appellant herein had requested the Court below to consider the Application for stay of the Arbitral Award below Exhibit-5 as part of that Application.

4. In that view of the matter, the following order is passed :

(i) The impugned order dated 9th March, 2022 passed by the District Judge – 2, Pune is set aside.

(ii) The Court below viz. District Judge – 2, Pune is requested to disposed of the application below Exhibit-5 for stay of the arbitral award preferably within a period of four weeks from being communicated this order.

(iii) Liberty is granted to the Appellant to apply for interim relief which had been sought in Application under Section 9 of the Arbitration Act in the Application below

Exhibit-5, pending before the lower Court.

(iv) Needless to state that the application below Exhibit-5 shall be disposed of by the Court below on its own merits.

(v) All rights and contentions of the parties are expressly kept open.

(vi) Arbitration Appeal is accordingly disposed of.

[R.I. CHAGLA, J.]