

Sharayu Khot.

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

NOTICE OF MOTION NO. 2197 OF 2018
IN
ARBITRATION PETITION (L) NO. 267 OF 2018

M/s. Siroya Developers Private Ltd.

...Applicant/
Petitioner

Versus

M/s. Karimjee Pvt.Ltd.

...Respondent

Ms. Prachi Khandge for the Applicant.

Mrs. Jinal Mehta i/by Mehta & Co. for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 18 December 2023

ORDER :

1. By this Notice of Motion, the Applicant/original Petitioner is seeking setting aside of the conditional order dated 5th June 2018 passed by the Prothonotary & Senior Master of this Court and for restoration of the above Arbitration Petition.

2. It is stated by the learned Advocate for the Petitioner that

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an objection was raised by the department upon the filing of the Arbitration Petition on the ground that the Court fees had to be paid as per the Bombay Court Fees Act, 1959 based on the claim of the Petitioner i.e. on the basis of valuation of the property for which the joint venture agreement was executed. Thus, a dispute had been raised about the Court fees to be paid and the matter was under objection.

3. The Prothonotary & Senior Master of this Court by the conditional order dated 5th June 2018, directed the Petitioner to remove the office objections on the Petition and get the same numbered and registered on or before 26th June 2018, failing which the Petition would stand rejected.

4. The learned Advocate for the Petitioner stated that as the dispute with regard to the Court fees was not determined, the Arbitration Petition came to be rejected by the conditional order dated 5th June 2018 on 26th June 2018.

5. The learned Advocate for the Petitioner further stated that upon consultation, the Applicant/Petitioner learnt that the Court

fees payable on the present Arbitration Petition would be as per Schedule I Clause 3 of the Bombay Court Fees Act, 1959. Accordingly, the party challenging the Arbitral Award has to pay half of the ad valorem fees payable on the amount as awarded or mentioned in the Arbitral Award.

6. Accordingly, the Applicant/Petitioner has thereafter paid the Court fees of Rs. 38,000/- in the above Arbitration Petition on the basis of half of the ad valorem fees payable i.e. Rs. 25,00,000/- being half of the amount awarded by the impugned Arbitral Award.

7. The learned Advocate for the Applicant/Petitioner has stated that in the event, the present Notice of Motion is allowed, no prejudice will be caused to the Respondent.

8. The learned Advocate for the Respondent has submitted to the orders of this Court.

9. Having considered the averments in the Affidavit in Support of the Notice of Motion as well as on taking note of the fact that the quantum of Court fees was the only objection which has

been raised by the department of this Court and by virtue of which the conditional order dated 5th June 2018 was passed by the Prothonotary & Senior Master of this Court to remove the objection, in the interest of justice, the present Notice of Motion is required to be allowed by setting aside the conditional order of the Prothonotary & Senior Master of this Court dated 5th June 2018.

10. Further, considering that the Applicant/Petitioner has paid the Court fees as per the Schedule I Clause 3 of the Bombay Court Fees Act, 1959, which provides for the party challenging the Arbitral Award to pay on the basis of half of the ad valorem fees payable on the amount awarded or mentioned in the Arbitral Award. This shall be taken into account by the Prothonotary & Senior Master of this Court.

11. Accordingly, the following order is passed.:-

(i) Delay in filing the present Notice of Motion is condoned.

(ii) Conditional order dated 5th June 2018 passed by the

Prothonotary & Senior Master of this Court is set aside.

(iii) The above Arbitration Petition is restored to file.

(iv) Notice of Motion is accordingly, disposed of.

[R.I. CHAGLA J.]