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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.11797 OF 2024

ARBITRATION PETITION NO.146 OF 2024

M/s. Sky One Corporate Park LLP and Ors.

...Applicants /
Petitioners

Versus

Shobha Rasiklal Dhariwal and Anr.

...Respondents

Gulnar Mistry with Subit Chakrabarti and Khushnumah Banerjee i/b.
Vidhii Partners for the Petitioners.

Vishwajeet Sawant, Senior Advocate, Aniket Nikam, Apurva Mahadik
i/b. Ashish Pawar for Respondent Nos.1 and 2.

CORAM : R.I. CHAGLA J.

DATE : 7TH OCTOBER, 2024.

ORDER :

1. By this Interim Application, the Applicant / Petitioner has sought stay on the proceedings in Special Darkhast (Execution Application) No.19 of 2023 and all interlocutory application/s taken out therein.

2. Urgency was made out by Ms. Gulnar Mistry during the

mentioning of the matter for the Petitioners and accordingly this Court placed the matter on the production board. The Execution Proceedings are continuing and next date of hearing is 9th October, 2024 when a last chance is given to judgment debtor to proceed with the matter.

3. Ms. Gulnar Mistry has referred to the impugned order dated 5th April, 2024 passed by the 8th Joint Civil Judge, S.D. Pune wherein although it has been held that there exists an Arbitration Agreement between the parties and the subject matter is the same as the proceedings before the Execution Court, the matter has not been referred to arbitration on the premise that the first statement filed is on the substance of the dispute. Further, that it can be assumed that the Applicant herein has submitted to the jurisdiction of the Court and waived its right to seek a reference to Arbitration.

4. Ms. Gulnar Mistry has referred to the Reply of the Respondent / Applicant herein to the Execution Application and Interim Application wherein in paragraph 5 the Applicant herein has made reference to the Arbitration Agreement which initially provides for mediation / conciliation and thereafter arbitration in order to

contend that the Execution Proceedings are not maintainable before the court.

5. Mr. Vishwajeet Sawant, learned Senior Counsel appearing for the Respondents has referred to the Consent Terms which has become a decree of the court and is being executed. He has submitted that in Clause 9 of the Consent Terms it is mentioned that, “The Defendant No.1 shall pay an additional amount of Rs.24 Crores to the Plaintiff within one year from the date of execution of these Consent Terms”. He has submitted that Clause 9 of the Consent Terms is to be read independent from Clause 4 of the Consent Terms which states that the Consent Terms are subject to the full and final repayment of the loan amount payable to Catalyst Trusteeship Ltd. / L & T Finance Ltd by the Defendant No.1 and shall be enforceable only after the said repayment which will be within a reasonable time and not later than 31st December, 2023. It is the case of the Applicant herein that this payment has not been made till date.

6. Having considered the submissions, the Arbitration Petition requires consideration, particularly with regard to the Arbitration Agreement in Consent Terms and whether the Applicant

herein has in the first statement in the Execution proceedings referred to the substance of the dispute and / or submitted to a jurisdiction of the Execution Court and waived its right to seek a reference to Arbitration.

7. Accordingly, the 8th Jt. Civil Judge, S.D., Pune is requested not to proceed with the Special Darkhast (Execution Application) No.19 of 2023 till the Arbitration Petition is disposed of.

8. The Arbitration Petition shall be placed along with Interim Application on 18th October, 2024, First at 2.30 p.m.

[R.I. CHAGLA J.]