
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO. 9 OF 2025

Century Rayon Employees Cooperative Housing Society Ltd ...Appellant

Versus

M s Roy and Associates ...Respondent

Mr. Sandeep V. Bane a/w Shubham S. Bane, Pooja S. Bane & Shefali Jadhav for the Appellant.

Mr. Sandesh Shukla a/w Yogendra Shirwadkar, Sayli Patil, Amol Thorat, Annasamah Sayed, i/b Vivek Patil & Associates for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 29, 2025

PC :

1. The challenge in this Petition is to an order dated November 6, 2024 rejecting an Application filed by the Petitioner insisting that unless and until full deposit of the arbitral amount is made, the Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) filed before said Court, namely, the District Court, Thane must not be heard.

2. It is a matter of record that execution proceedings are also underway. The initial objection raised by the Respondent in the Petition

before this Court is that it is not covered by any of the appellate provisions contained in Section 37 of the Act.

3. Toward this end, the contents of the Application and the impugned order have been examined. *Ex facie*, the Application and the impugned order are clearly referable to the scope of jurisdiction contained in Section 9 of the Act. Since the Application did not invoke any specific provision but the reliefs sought in the Application (Application at Exhibit 14) are referable to Section 9 of the Act, the impugned order can be treated as an order refusing relief sought in terms of the Section 9 of the Act. A bare reading of the section 9 of the Act would point to the jurisdiction of the Section 9 Court being available even after the passing of the arbitral award, and that too at the behest of the judgment creditor in the arbitral award (the Petitioner is the judgement creditor). Such protection may indeed be sought to ensure that the arbitral award is not rendered inconsequential by the time the Petition under Section 34 is heard. In this light, it can be discerned that the Petitioner sought a full deposit as a precondition.

4. While the impugned order was passed on November 6, 2024, it is noteworthy that two months before this on September 13, 2024

another order had been passed by the Learned District Court, Thane effectively deferring a hearing of the stay application filed by the Respondent (Exhibit 5) and of the aforesaid Application (Exhibit 14, in which the impugned order is passed) to a future date on the premise that if the record and proceedings are received, the Stay Application would not be pressed and the matter would be heard finally.

5. Nearly seven months have gone by and there is no sign of the challenge under Section 34 being heard. In these circumstances, considering that the Application was essentially to secure the arbitral award it would be appropriate that the Application under Exhibit 14 be heard as if it is an application under Section 9 of the Act. The Learned District Court would be at liberty to mould such relief as it deems fit bearing in mind the spirit and objective, namely, to secure the amount awarded in the arbitral award. It is also apparent from the *roznama* that the stay application is not being pressed, on the premise that the final hearing of Section 34 may be undertaken at the earliest. However, in the interregnum, the application referable to Section 9 (Exhibit 14) has been rejected. Therefore, the application by the Petitioner, seeking a deposit is rejected while the application by the Respondent seeking a stay (Exhibit 5) is kept on hold in the hope that the Section 34 Petition would be heard.

6. It is apparent that the interests of the judgment creditor in the arbitral award could indeed fall into jeopardy in the aforesaid circumstances. In these circumstances, it would be appropriate to set aside the impugned order by way of a remand directing that the Learned District Court, Thane shall consider the Application under Exhibit 14 as well the Application under Exhibit 5 forthwith without waiting for a final hearing of the Petition under Section 34 of the Act.

7. Each of these can continue without prejudice to other but since seven months have gone by without the amount awarded in arbitral award being secured, it would be appropriate for the District Court to deal with these two Applications concurrently one way or the other, so that the Petitioner knows where he stands.

8. With the aforesaid directions, the impugned order is set aside and the application that was disposed of by it, is remanded for afresh consideration by the District Court, Thane particularly, taking into account the fact that in September 2024 both the Stay Application and this Application were meant to be heard together but this Application (Exhibit 14) came to be rejected while pursuit of the Stay Application

lies within the sole will of the Respondent. It is in these circumstances, that the aforesaid order is passed.

9. The Petition is *finally disposed of* in the aforesaid terms.

10. Needless to say, nothing in this order is an expression of an opinion on merits or whether the Petitioner should be secured and in what manner. All these facets are kept open for explicit consideration by the District Court, Thane treating the Application under Exhibit 14 as a Petition under Section 9 of the Act.

11. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]