

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 31 OF 2025

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Century Rayon Employees Co Op
Housing Society. Ltd.

...Appellant

Versus

M/s Roy and Associates
Thr. Sole Proprietor Shri. Surojeet Roy

...Respondent

Mr. Sandeep V. Bane a/w. Adv. Shubham S. Bane, Pooja S. Bane,
Shefali Jadhav, Kavita Gawde, Shruti Mishra, Ashok Yadav and
Devesh Naik, for Appellant.

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : December 10, 2025

ORDER :

1. This is a challenge filed under Section 37 of the Arbitration and Conciliation Act, 1996 (“*the Act*”) impugning the rejection of a post-award Section 9 Petition filed by the Appellant before the Learned District Judge, Thane.

2. The factual matrix in which these proceedings have come to this Court, is indeed peculiar and calls for some comment. By an order dated January 4, 2021, nearly six years ago, a pre-arbitration intervention under Section 9 of the Act had been made, which required

the Respondent to deposit a sum of Rs.1,00,08,000/- to preserve and protect the subject matter of arbitration. This order came to be challenged under Section 37 of the Act and a Learned Single Judge of this Court refused to interfere, and directed that the amount directed to be deposited under Section 9 proceedings ought to be deposited. The time given for such deposit was six weeks. The deposit was directed to be made before the Court of the Principal District Judge, Thane.

3. The order dated November 9, 2022 passed by the Learned Single Judge of this Court refusing to interfere with the Section 9 order was not carried any higher. It attained finality. Admittedly, till date, no deposit has been made.

4. Eventually, the arbitral award came to be passed on April 30, 2023, awarding various amounts which aggregate to approximately Rs. 28 crores. This led to the post-award Section 9 Petition being filed before the District Court. That Petition was kept in abeyance on the premise that the Section 34 proceedings would be heard urgently, and therefore, there would be no need for a post award Section 9 Petition being considered.

5. Such a stance was challenged before me. By an order dated

April 29, 2025 in Arbitration Appeal No. 9 of 2025, after hearing the parties, I passed an order, disposing of that challenge by requesting the District Judge to consider the Section 9 application afresh, without waiting for a final hearing of the Petition under Section 34 of the Act. In particular, the following extracts of the said order are noteworthy :

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. Despite

a specific 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.

[Emphasis Supplied]

6. Yet, despite the scope of remand being clear, it appears that the Learned District Judge has not considered or dealt with the Section 9 Petition despite reproducing my earlier order extracted from above. Five more months have gone by. By an order dated September 12, 2025, the Learned District Judge, yet again, has stated that Section 34 proceedings may be considered without pressing the Section 9 Petition. The following extracts from the Impugned Order, are noteworthy :

“11 Before deciding present application, I gave option to both side Ld.

Advocates to concentrate on appeal to decide it finally. Adv. Bane for respondent-society is not ready to argue it finally and insisted that in view of present application, appellant- developer be directed to deposit 100% of the arrears before entertaining present appeal. With cost of repetition, it is to note that there is no such provision like MSMED Act to compel judgement debtor to deposit the amount.....”

[Emphasis Supplied]

7. It is apparent that the Learned District Judge has not taken notice of the contents of the order dated April 29, 2025 passed by this Court despite reproducing Paragraphs 6 and 10 of the said order. It would have been open to the Learned District Judge to deal with the Section 9 application on merits and come to a finding that the arbitral award need not be secured. However, the impugned order evidently records that the choice has been given to proceed with the Section 34 Petition without any need to consider the Section 9 Application. This places the party that has simply not complied with the earlier Section 9 order despite a challenge to it having failed, a free pass, with no consequence. Despite being protected by a pre-award Section 9 order preserving the subject matter of the arbitration nearly six years ago, the Petitioner, who is now a judgement creditor, has been left holding a paper arbitral award in the Section 34 Petition.

8. In these circumstances, it would be appropriate to interfere with the Impugned Order. To enable arbitration proceedings to be meaningful for the parties, the following order is passed :

a) The parties shall appear before the District Judge, Thane, on ***December 19, 2025*** on which date, he shall give directions on how to proceed further on hearing of the Section 34 Petition;

b) This Petition under Section 37 of the Act, with jurisdiction over a decision under Section 9, is hereby allowed by directing that the sum of Rs.1,00,08,000/- with interest thereon at 12% per annum for the last six years (as ordered in the pre-award Section 9 Order), shall be deposited ***within a period of two weeks of the upload of this order on the website of this Court***, with the Prothonotary and Senior Master of this Court. Such amount shall abide by the outcome of the Section 34 Petition before the District Judge;

c) Since the Learned District Judge is reluctant to consider the Section 9 Application, this order is passed in the appellate jurisdiction. The Section 9 Petition before him is

deemed to have been disposed of in terms of this order. The District Judge is now expected to apply himself to dealing with the Section 34 proceedings and the Petitioner too shall co-operate and participate in the proceedings, to enable the Learned District Judge to dispose of the same in accordance with law on merits at the earliest, by fixing a specific time schedule for completion of submissions and passing a final judgement; and

d) The hearing on ***December 19, 2025*** shall be a Case Management Hearing on which date, specific time limits shall be assigned to the respective parties for completion of their submissions under Section 34 of the Act. the matter shall proceed forward from that stage.

9. 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.]