

(2012) 04 BOM CK 0147

In the Bombay High Court

Case No : Arbitration Petition No. 943 of 2011

Bimla Devi Vijan and Mahinder Kumar Vijan

APPELLANT

Vs

Chandraprakash Vijan

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2012) 04 BOM CK 0147

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Sandeep Parikh assisted with Mr. Rajesh G. Singh instructed by M/s. Legal Liasons, for the Appellant; Javed Hussein instructed by y M/s. Hussein and Co., for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The Petitioners being partner of a firm governed by partnership deed dated 20 November 1995, as dispute arose, referred the matter to the Arbitral Tribunal. The same is pending for cross-examination. However, filed Section 9 Petition under the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act") for the following relief:-

(a) Permit the Petitioners to withdraw a proportionate share of 65% of the amount of Royalty deposited by the Respondent as Agent with the Court Receiver, High Court, Bombay namely Rs. 44,742.75/- being the proportionate share in the monthly royalty amount of Rs. 5,36,913/- (Rupees Five Lacs Thirty Six Thousand Nine Hundred Thirteen Only) being the proportionate share in the annual royalty amount;

this Court on 6 October 2010, in earlier Petition No. 1229 of 2010 appointed the Receiver of the partnership firm Hind Automobiles (Dongri) and of the assets and properties more described in the schedule, with further direction to take formal possession and to appoint an agent in the usual manner. The liberty was granted

to the parties for the agency of the Court Receiver. The order remained affirmed even in the Appeal. The Receiver took formal possession of the properties. The meetings were fixed by the Receiver. The Respondent gave highest offer. Therefore, appointed as an agent of the Court, in respect of the Suit business (the Petrol Pump), the agency agreement has been executed accordingly. The Respondent from April 2011 has been depositing the royalty. The amount lying with the Receiver in that account is to the tune of about Rs. 9,00,000/-.

2. There is no adjudication of the shares and/or disputes between the parties by the Arbitrator. It is at the stage of cross-examination. The Petitioners, moved this Section 9 Application as the Court has appointed Receiver arising out of the dispute between the parties partnership deed. The claim of the Petitioners, pending the settlement of the disputes though there is no serious challenge to the respective shares of the parties, yet as contended rightly, the royalty amount so lying with the Receiver in no way can be treated as profit of the firm. It is, therefore, at this stage, difficult to divide and/or dispose of, based upon the respective partnership shares of the partners. This amount, cannot be treated as profit deposit with the Court Receiver. The party/agent is under obligation to deposit the amount regularly irrespective of its gain or losses. Admittedly, the Arbitrator has not issued any direction nor issued any interim or preliminary award which entitled the Petitioners and/or any other party to claim proportionate share in the monthly and/or annual royalty amount.

3. Considering the averments made by the Petitioners and the submissions so raised with regard to the need of the financial help, in my view, just cannot be adjudicated for the first time in Section 9 Petition pending the Arbitration proceedings. However, liberty is granted to the Petitioners to apply for appropriate order before the Tribunal. The Arbitral Tribunal, though Receiver is appointed, yet at least can adjudicate the interim entitlement, if any, of the Petitioners. If both the parties agreed and if there is no hurdle otherwise in law, the Arbitrator may pass such appropriate order. The order so passed will be subject to the further order of the Court, as the Receiver of the Court is incharge and/or in control of the properties of the firm.

4. The authorities cited by the counsel in no way supports the case basically on the facts and circumstances so referred above. The power and award of the Receiver and/or the Court, in a given case, may be invoked for appropriate relief and/or order. But, considering the final stage of the Arbitration Proceedings and as there is no order and/or such application moved and/or decided by the Arbitrator, the present Petition so filed for the amount, subject to adjudication, in my view, at this stage, cannot be entertained. However, the liberty is granted to the Petitioners to take out appropriate application before the Arbitral Tribunal or the Court in the changed circumstances. Resultantly, the Petition is dismissed. There shall be no order as to costs.