

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

NOTICE OF MOTION NO.3200 OF 2004
IN
APPEAL NO.488 OF 2004
IN
ARBITRATION PETITION NO.196 OF 2004

Eswaran & Sons Eng. Ltd. & Ors .. Applicants.

V/s.

Niskalp Inv. & Trading Co. Ltd. .. Respondent.

Mr.Dinesh Purandare i/b. Madekar & Co. for the
applicants.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 29TH OCTOBER, 2004.

P.C. :

Heard Mr.Dinesh Purandare, the learned
counsel for the applicant/original respondent.

2. On October 15, 2004, we passed the
following order :

" At the outset, the learned counsel
for the appellants submitted that the
appellants are ready and willing to give
an undertaking that they would not dispose
or part with possession or alienate or
encumber or create any third party right,
title or interest in respect of the
properties/assets described in Exhibits
B-1, B-2 and B-3 to the arbitration
petition under section 9 filed by the
present respondent. The learned counsel
also submitted that the appellants are

willing to undertake that they would not dispose of or alienate or encumber or create any third party right, title or interest in respect of the shares described in schedule to Exhibit F to the said petition.

2. In the backdrop of the submission of the learned counsel for the appellants, the learned counsel for the respondent submitted that the respondent is not desirous of seeking any further relief presently in the arbitration petition since the question of jurisdiction is under consideration by the arbitrator under Section 16 of Arbitration and Conciliation Act, 1996. The learned counsel for the respondent, however, submitted that in the light of the decision that may be given by the arbitrator concerning the aspect of jurisdiction, liberty may be given to the said respondent to take appropriate proceedings for interim measure of protection either under Section 17 or section 9 of the Act of 1996.

3. In the light of the submissions made by the learned counsel for the parties, we are satisfied that this appeal may be disposed of by the following order:

(i) The appellants shall file an undertaking before this Court within two weeks from today as per the statement made by their counsel and recorded hereinabove.

(ii) In the light of the undertaking by the appellants the arbitration petition no.196/2004 stands withdrawn and the impugned order is rendered ineffective.

(iii) The respondent shall be at liberty to apply for interim measure of protection either under Section 9 of Section 17 of the Act of 1996, if necessary, in the light of the order that may be passed by the arbitrator on the question of jurisdiction.

4. The appeal is disposed of accordingly.

3. By this notice of motion, the original respondent prays for the following reliefs :

(a) that the Court Receiver, High Court, Bombay be appointed Receiver of the said properties/assets more particularly described in the schedule being Exhibits "B-1", "B-2" and "B-3" of the underlying Arbitration Petition No.196 of 2004 with all powers under order 40 Rule 1 of the Code of Civil Procedure 1908 and that the Court Receiver, High Court, Bombay be directed to forthwith take formal/symbolic possession of the assets/properties;

(b) that the order dated 15th October 2004 be recalled and Notice of Motion No.2901 of 2004 and Appeal No.488 of 2004 be decided as per law.

(c) that the underlying Arbitration Petition No.196 of 2004 be restored.

(d) the Appeal be heard forthwith;

(e) ad-interim reliefs in terms of prayers (a), (b), (c) and (d) above;

(f) for costs of the Notice of Motion;

(g) for such further and other reliefs as the nature and circumstances of the case may require;

4. However, during the course of hearing of the notice of motion, the learned counsel for the original respondent submitted that the respondent by means of this notice of motion is mainly concerned with withdrawal of the statement made by the counsel for the respondent and recorded in para 2 of our

order dated October 15, 2004 in the light of the events that had taken place subsequent to the passing of that order. The event that is said to have taken place subsequent to October 15, 2004 is that some share holders of appellant No.6 had filed a suit being Suit No.5370 of 2004 in the Court of the XVI Assistant Judge, City Civil Court, Chennai for permanent injunction restraining the defendants therein from proceeding further in the arbitration proceedings. In the said suit, certain other reliefs have also been sought for. The learned counsel for the original respondent submits that in that suit an interim application was also moved in which injunction was granted restraining the arbitrator and parties to the suit from proceeding with the arbitration.

5. We reflected over the submissions. In our view if any restraint order has been passed by the Court in Chennai in the suit filed by some share holders of the appellant No.6 company against the interest of the original respondent, the remedy lies with the original respondent is take out appropriate proceeding and get the stay order vacated or challenge the said order in appropriate proceedings. The event that is said to have taken place subsequent

to the order dated October 15, 2004 surely does not make out a case for withdrawal of the statement made by the counsel for original respondents and recorded in para 2 of our order dated October 15, 2004.

6. Incidentally, we may notice that the statement made by the counsel for the original respondents recorded by us in para 2 of our order dated October 15, 2004 was made in the backdrop of the submission made by the counsel for the appellants that the appellants would not dispose of or part with possession or alienate or encumber or create any third party right, title or interest in respect of the properties/assets described in Exhibits B-1, B-2 and B-3 to the arbitration petition filed by the respondents under Section 9 of the Arbitration & Conciliation Act, 1996.

7. We are, accordingly, satisfied that the notice of motion cannot be granted. We order accordingly.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)