

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.745 OF 2008

IN

EXECUTION APPLICATION NO.69 OF 2008

IN

AWARD DATED 23RD DECEMBER 2006

Union of India. .. Petitioner

Versus

M/s.D.Gowadia & Co. .. Respondent

Mr.S.R.Rajguru i/b. Ms.Rutuja Ambekar for Union
of India petitioner

Respondent present in person

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th May 2008

P.C.

. This chamber summons which has been filed on behalf of Union of India seeks setting aside of the order dated 31st July 2007 which has been passed in Arbitration Petition (L) No.163 of 2007 dismissing it for non compliance with the order and direction with regard to removal of office objections. In other words, the petition has

been rejected under Rule 986 of the Bombay High Court (OS) Rules. In the meanwhile, the respondent claimant commenced execution proceedings to execute the subject award and requested that a warrant of attachment be issued insofar as the account of the petitioner with the Reserve Bank of India. Accordingly, a warrant of attachment was issued on 15th/17th March 2008 and the account with the R.B.I. in the name of petitioner has been attached.

2. The request is to raise that attachment as well.

3. The matter discloses sorry state of affairs inasmuch as the Arbitration Petition under section 34 of the Arbitration and Conciliation Act has been filed to challenge an Award made in favour of the respondent claimant on 23rd December 2006 by the sole arbitrator. The amount awarded under several claims/heads is

Rs.46,84,735 being the principal sum and the interest at 18% p.a. on the same.

4. The petition was filed to challenge this award but no steps were taken by the Union of India to get the said petition numbered and placed on board. Consequently, the Prothonotary & Senior Master gave one last opportunity to the petitioner Union of India to remove office objections and get the petition numbered on or before 7th August 2007, failing which it was to stand rejected automatically. No compliance is reported of the order dated 31st July 2007 of the Prothonotary & Senior Master and, therefore, the petition stood dismissed for want of prosecution.

5. Now, the request is to restore this petition and Mr.Rajguru upon instructions makes a statement that this Court can impose such conditions as are reasonable and after an opportunity is given to the petitioner to remove

all office objections, petition be placed for admission before the regular court. He submits that even the attachment should be raised inasmuch as the account of Garrison Engineer with the RBI cannot be operated on account of attachment levied and it is now difficult to disburse any sums therefrom, including salaries of staff. In such circumstances and in facts peculiar to this case restoration be allowed and the attachment be raised.

6. Respondent - claimant has appeared in person pursuant to notice and requested for time. His Advocate is not in Mumbai, according to him.

7. However, considering the urgency of the matter, circulation was granted yesterday and the matter was placed today. I have heard Mr.Rajguru at length and perused with his assistance the records. I have also heard party in person. In my view, no prejudice will be caused to the

respondent claimant if after imposing appropriate conditions, the petition filed to challenge the award is restored to file and even attachment is raised. Ultimately, the question is of public interest as public funds are involved. It may be that the Advocate for Union of India or the other officers were not prompt and vigilant in conduct of the proceedings. However, on account of their lapse and negligence the public at large should not suffer. Even the respondent claimant should not suffer as there is no fault on his part. Therefore, interest of justice would be sub-served if time of two weeks from today is granted to the petitioner Union of India to remove all office objections and if the same is done, petition be numbered and placed before regular court for Admission. Needless to state that no further extension will be granted under any circumstances and no application would be entertained for restoration thereafter.

8. As far as attachment of the Account with RBI is concerned, interest of justice would be sub-served if the claim of the original claimant is secured to the extent of principal amount. The claimant has placed before me a copy of the letter dated 12th May 2008 addressed by RBI to the Sheriff of Mumbai which says that even though the award and the attachment warrant specifies the amount of Rs.96,13,918.86 the account of Garrison Engineering has to its credit only Rs.64,62,931 as of May 8, 2008, therefore, the attachment cannot be raised unconditionally is the request.

9. Considering the totality of the matter, interest of justice would be sub-served if the attachment is directed to be raised on Union of India depositing in this Court an amount of Rs.46,84,335/- being principal amount under the Award. If the said sum is deposited within two weeks from today, the attachment which has been

levied on the said account with RBI shall stand raised and the account can be operated. The deposit is without prejudice to the rights and contentions of both sides, in the main Arbitration Petition. The deposit shall abide by further orders in the Arbitration petition. Needless to state that if the amount is not deposited attachment continues and all consequences in law would, thereafter, follow. The chamber summons is disposed of in the above terms. Petitioner Union of India to pay cost quantified at Rs.2,500/- to the claimant - respondent. Costs condition precedent. All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)