

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

INTERIM APPLICATION (L) NO.22483 OF 2022

IN

COMMERCIAL ARBITRATION PETITION NO.516 OF 2021

Montana Developers Pvt.Ltd. ...Applicant/Petitioner.

Vs.

Aditya Developers & 7 Ors. ... Respondents.

Mr.Rohit Lalwani a/w Uttam Rane a/w Rajeshkumar Shukla i/b U.S. Rane
for the petitioner.

Mr.Pradeep Sancheti, Sr. Counsel, Mrs. Pooja Kshirsagar-Kane, Mr. Jitendra
Jain, Mr. Laxman Jain i/b Mr. Yogesh Adhia, Advocates for respondents.

CORAM : MANISH PITALE, J.

DATE : 6th October, 2022.

PC. :

1. By this application, the applicant/petitioner is seeking stay of operation of Award dated 02.06.2021 passed by the learned Arbitrator.

2. It is an admitted position that earlier Interim Application No.3289/2021 was filed wherein, apart from seeking stay of operation of the said Award, the applicant further sought an injunction against the

respondent from dealing with the subject property.

3. Such application was disposed of by an order dated 27.1.2022 which reads as follows;

- 1. Learned counsel for the applicant seeks leave to withdraw this interim application with liberty to file Section 9 petition as also a separate interim application praying for stay of the award.*
- 2. Allowed to be withdrawn with liberty as prayed for.*
- 3. Disposed of. No costs.*
- 4. All contentions of the parties are expressly kept open.*

4. It is also an admitted position that in terms of liberty granted by order dated 27th January 2022, the applicant has indeed moved petition u/s 9 of the Arbitration and Conciliation Act, which is pending for consideration before the appropriate Bench. It is in this background that the present application is filed seeking stay of the impugned award.

5. Operative portion of the Award dated 02.06.2021 reads as follows:

- (a) The claims made by the claimant are dismissed.*
- (b) It is declared that JV Agreement (JC-3) and the power of attorney (JC-5) were terminated by the Agreement dated 2nd October 2012 (R-64).*

(c) The respondents do pay to the claimant a sum of Rs.75 Crores with interest thereon at the rate of 6% per annum from 2nd October, 2013 till payment. However, if the amounts awarded are not paid/deposited within 120 days from the date of the receipt of the award by the respondents, from the date of default the interest shall be @15% p.a. till payment.

(d) No order as to costs.

6. The claims of the claimant i.e. the petitioner herein were dismissed as per the said award and respondents were directed to pay specific sum of money with interest to the applicant/claimant. This Court is unable to understand how grant of stay of the said award can accrue to the benefit of the applicant. On the contrary, stay of the award would also mean stay of clause (c) of the operative portion of the award. It would amount to the applicant seeking stay of the specific direction granted by the learned Arbitrator in the award directing the respondent to pay a specific amount with interest to the applicant/claimant. The real concern of the applicant seems to be that during pendency of the petition u/s 34 of the said Act, the respondents need to be enjoined from dealing with the subject property. The said relief is obviously subject matter of the petition filed u/s 9 of the said Act, which is pending before the appropriate Bench.

7. Therefore, this Court finds no substance in the contentions raised in the present application.

8. At this stage, learned Counsel for the applicant submits on instructions that he wants to file rejoinder affidavit to the reply affidavit of the respondents. This Court is informed that although a copy of the reply affidavit was served on the applicant, the same could not be filed in the office of this Court. Therefore, this Court is not referring to the reply of the respondents and hence, there is no question of giving time for filing rejoinder affidavit.

9. The interim application is dismissed as being devoid of merits.

10. List the petition, for admission, on 22.11.2022.

(MANISH PITALE, J.)