

**In the court of Sh. Ashwani Kumar Sarpal, District Judge-
Commercial Court-05, Central District
Tis Hazari, Delhi**

Mrs. Nalini Nanjundiah

vs.

M/s. Religare Finvest Limited

[OMP (Comm) ⁵⁴/₂/2020]

20-7-2020

Present:- Sh. Deepak Bansal, advocate for petitioner

This is a fresh petition under Section 34 of Arbitration & Conciliation Act challenging the award dated 24-4-2018 for more than Rs. 36 lakhs passed against M/s. Sanfab India Ltd. company and its two directors. It be checked and registered.

Today proceedings conducted through video conferencing. Counsel for the petitioner pressed for exparte stay against Execution no. 4359/2018 pending in the court of LXIII, ACC & SJ, CCH-64, City Civil Court, Bengaluru arising out of award dated 24-4-2018.

Petitioner, being one of the director of M/s. Sanfab India Ltd. company is held jointly and severally liable to pay the award amount. According to petitioner, she never received any notice dated 26-4-2017 from the respondent company prior to making reference to the arbitrator nor received any of two notices dated 18-7-2017 and 23-8-2017 from the office of arbitrator. She disputed the correctness of exparte award in question and alleged that she came to know first time about this award on 10-3-2020 when officials of the respondent

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company with officials of local court came at residence of her daughter along with warrants of attachment issued by that concerned local executing court. She is presently residing at house of her daughter.

Petitioner allegedly is aged about 80 years at present. Her son is the managing director of M/s. Sanfab India Ltd. Company. She claimed that she was earlier living with her son and being household lady used to sign the documents at the instance of her son blindly due to fiduciary relationship without having any knowledge of its contents. According to petitioner, she was evicted by her son in the year 2017 from his house and since then she is living with her daughter.

If para no. (xv) of the petition is taken into consideration, then it appears that two cheques of Rs. 5 lakhs each were forcibly taken from her daughter on 10-3-2020 of her personal account by officials of the respondent accompanied by officials sent by executing court whereas in the complaint dated 14-3-2020 lodged with police she mentioned that two cheques were taken from her which were of her personal account. Petitioner is not sure whether the cheques issued belonged to her account or her daughter's account. It is also stated that personal guarantee of her daughter was forcibly taken by those officials in respect of encashment of the cheques issued by the petitioner. Daughter of the petitioner had not lodged any complaint to police ever regarding obtaining of her alleged two personal cheques on 10-3-2020 and forcibly taking of guarantee of encashment of those cheques. Further, in the police complaint petitioner mentioned about taking of Rs. 7,000/- by the officials of the respondent without issuing any receipt but no such allegations is leveled in the petition.

After 10-3-2020, one date of hearing had come before executing court but no allegations were made regarding pressure and force used upon petitioner and her daughter by the officials of the respondent company as well as the officials of the court. Even if the executing



court was closed due to Covid-19 Pandemic, still the complaint could be lodged with the court concerned or higher authorities through online mentioning about details of incident but no steps were taken. It is unbelievable that courts in Karnataka were not having any official e-mail.

Petitioner is not giving address of her son and details of property in which she was earlier living with him. Whether her son is living in that property or not or has left that property after disposing off the same is not disclosed. She is not disclosing whereabouts of her son. Mere mentioning that she does not know whereabouts of her son is not acceptable. She has not filed any document on record that her son was the managing director of the M/s. Sanfab India Ltd. company and she was just a name sake director. Whether this company is still working or not and what is its status is also not disclosed. She used to sign the documents and on this ground she cannot avoid her responsibility very easily. Thus, petitioner is concealing some material facts from the court. Mere fact that she is now aged about 80 years itself is not a ground to automatically grant *ex parte* stay of the execution unconditionally when it is not her case that she is totally illiterate and is totally bed ridden. Petitioner has not alleged anything about her bad medical condition nor placed on record any of her medical documents. Moreover law says that she cannot be arrested or confined to civil imprisonment in the execution of recovery of amount and maximum her property or assets can be attached so there is no immediate apprehension of arrest by executing court arises.

No document is filed on record to show that she left the last known address and separated from her son in the year 2017 and shifted to address of her daughter. In such circumstances, the findings of the arbitrator regarding service of speed post notice at the last known address of the petitioner has to be presumed when the



track report of service was also relied upon by arbitrator before proceeding petitioner as *ex parte* according to award. Leveling of allegations against executing court officials of putting pressure and exercising force appears to be baseless as presumption arises that public servant had discharged his duty as per law in proper manner.

Counsel for the petitioner could not tell what happened to the cheques of Rs. 10 lakhs given by the petitioner or her daughter to the respondent, whether the same has been encashed or bounced. If the cheques are honoured, then there is no difficulty for granting even *ex parte* stay to the petitioner at this stage but in case of dishonour of cheques, *ex parte* stay can be granted only upon some conditions.

When a query was made to the counsel for the petitioner that in a case of dishonour of cheques, whether petitioner is ready to deposit Rs. 10 lakhs in this court through DD which shall not be given to the respondent company till this objection petition is decided and this amount will be dealt with at last as per decision of this petition, then counsel wanted time to seek instructions from petitioner.

After considering the facts and circumstances of the case, petitioner is granted *ex parte* stay of execution no. 4359/2018 pending in the court of LXIII, ACC & SJ, CCH-64, City Civil Court, Bengaluru subject to deposit of Rs. 10 lakhs in this court through DD. If the cheques of Rs. 10 lakhs given on 10-3-2020 have already been encashed, then there will be stay of execution without any further deposit, but this conditional stay will be applicable only if the cheques given are not honoured so far. This *ex parte* stay will be applicable from the date of deposit of the DD in this court.

The execution no. 4359/2018 is coming for hearing before Court of LXIII, ACC & SJ, CCH-64, City Civil Court, Bengaluru on 1-8-2020 as informed by counsel so it is directed to this court not to proceed with the execution atleast on 1-8-2020.



Petitioner is directed to file her affidavit of all movable and immovable assets including details of bank account on next date along with relevant documents. She is also directed to inform what is the status of company M/s. Sanfab India Ltd. as well as also inform whereabouts of her son and his last known and present address.

Issue notice of this petition to the respondent company for 7-8-2020 on PF through official e-mail of the court as well as speed post. The matter will be taken up in court if it is opened by that time otherwise the proceedings will be conducted through video conferencing on that day at 11 a.m. One copy of the notice be given dasti and petitioner also can sent the copy of the notice to the respondent at her own level on the e-mail and whatsapp number if available of the respondent. One copy of this order be given dasti to the petitioner for production before executing court for information. Reader is directed to upload this order on website of the court.



(Ashwani Kumar Sarpal)

District Judge-Commercial-5

Central District, Delhi

Dt. 20-7-2020