

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6812 OF 2015**

Ranjan Jitendra Shah

..Petitioner

Vs.

Sarla Pradeep Shah & Ors.

..Respondents

Mr. S. S. Kanetkar a/w Mr. Pawan Kumar for the Petitioner

Mr. V. A. Thorat Senior Advocate a/w Mr. R. P. Ojha for the Respondent No.1

Mr. A. A. Pande for the Respondent Nos.2 to 4 & 6 to 10

CORAM : R. M. SAVANT, J.

DATE : 14th SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 24-3-2015 passed by the Learned Judge of the City Civil Court, Dindoshi, Mumbai, by which order, the Chamber Summons No.366 of 2014, filed by the Respondent No.1 i.e. original Plaintiff came to be allowed. Resultantly the Petitioner herein and the Respondent No.2 were deleted as Defendants from the Suit in question.

2 The Suit in question being S.C. Suit No.1322 of 2011 has been filed by the Respondent No.1 herein and the principal relief sought is a declaration that the Plaintiff is a partner of the Defendant No.1 firm i.e. M/s. Swastik Industries. The said relief is claimed on the basis that the Plaintiff's husband one Pradeep Shah was the partner of the Respondent No.1 and on his

death in terms of clause (20) of the Partnership Deed, the heirs are entitled to join as partners in place of the deceased partner. It is further the case of the Plaintiff that her children have given their no objection to the Plaintiff being joined as partner to the firm in question. The Petitioner herein who is the Defendant No.2 and the Defendant No.5 is the other partner against whom the Chamber Summons filed by the Plaintiff was made absolute by the Trial Court. In the said Suit, the Plaintiff has it seems filed a Notice of Motion for interim relief which Notice of Motion came to be allowed by the Learned Judge of the City Civil Court by order dated 18-1-2012 and pursuant thereto, the Plaintiff it seems is functioning as a partner of the Respondent No.1 firm. It seems that a show cause notice came to be issued to the Petitioner and the Respondent No.5 herein as to why they should not be removed as partners. The said show cause notice was in terms of clause (19) of the Partnership Deed. The hearing pursuant to the said show cause notice was kept on an appointed date. It seems that the Petitioner and the Respondent No.5 herein did not participate in the said hearing resulting in a decision being taken and a resolution being passed that they are retired as partners of the firm which resolution is dated 15-2-2014. It is thereafter that the instant Chamber Summons came to be filed for the relief of seeking deletion of the Petitioner and the Respondent No.5 who are the Defendant Nos.2 and 5 in the Suit. The relief in the Notice of Motion was founded on the aforesaid facts and principally on the fact that the Defendant Nos.2 and 5 have been retired as partners of the Respondent No.1

firm. The Trial Court considered the said application and having regard to the facts as aforestated where the Defendant Nos.2 and 5 have been retired held that they would have to be deleted as they were arrayed to the Suit as Defendants in their capacity of being partners of the Respondent No.1 firm.

3 The Learned Counsel appearing on behalf of the Petitioner sought to contend that since the Defendant Nos.2 and 5 have been removed pending the Suit and since the removal is in question, the Defendant Nos.2 and 5 ought not to have been deleted from the array of the Defendants and ought to have been continued by the Trial Court.

4 In my view, it is not possible to accept the said contention in the teeth of the resolution that has been passed retiring the Defendant Nos.2 and 5 as partners of the firm. It is also required to be noted that the Partnership Deed provides for a mechanism for redressal or for adjudication of the disputes that arise concerning the partnership which is by way of an Arbitration. It seems that the Defendant No.5 i.e. the Respondent No.5 has invoked the arbitration clause and had filed application under Section 11 of the Arbitration and Conciliation Act, an order has been passed by a Learned Single Judge of this Court (G.S. Patel J.) on 12-8-2014 appointing the arbitrator. However it seems that the Respondent No.5 has not taken any further steps. In so far as the Petitioner i.e. the Defendant No.2 is concerned he has not even filed an

application for the matter being referred to arbitration. In my view, therefore, having regard to the facts as aforestated, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order