

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1 OF 2015
IN
REVIEW PETITION NO.(Stamp) NO.31053 OF 2014
IN
ARBITRATION PETITION NO.13 OF 2009**

M/s. Aswani Builders & Ors.

...Applicants

V/s.

M/s. Parmar Realtors

...Opponent/Respondent

.....

Mr. Dilip Aswani for M/s. Aswani Builders (in person), for the Applicants.

Mr. Rajesh Dadar, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE: 6 JULY, 2015

P.C. :

. The arbitration petition was for appointment of an arbitrator, under Section 11 of the Arbitration and Conciliation Act, 1996 (“the Act”). By its order dated 12 June 2014, this Court allowed the petition and appointed a sole arbitrator to adjudicate upon the disputes and differences between the parties. The present review petition seeks review of that order.

2. The case of the review petitioner, stated shortly, is this. The original petitioner (i.e. the Petitioner in Arbitration Petition No.13 of 2009) is an unregistered partnership firm. At the hearing of the original petition, an objection was raised by the review petitioner (who was the original

Respondent in Arbitration Petition No.13 of 2009) that firm being unregistered, the petition could not be entertained by this Court at its instance. This Court in its order dated 12 June 2014 rejected this objection, holding that it was not disputed that on the date of the petition, the petitioner firm was registered and the relevant date being the date on which the petition was filed, there was no substance in the objection. The review petitioner, thereafter, made inquiries with the Registrar of Firms, which revealed that the firm was not registered at all. In the premises, the review petitioner prays for review of the order of 12 June 2014 on the basis of this new fact, which goes to the root of the matter and which was not to its knowledge when the impugned order was passed, seeking condonation of delay.

3. The delay is condoned and the review petition is taken up for admission.

4. There is no contest that on the date of the original petition, the petitioner firm was not registered. The contest is on a matter of law. It is submitted by the Respondent to the review petition that the objection on account of want of registration of the petitioner firm has no merit, since the bar under Section 69 of the Partnership Act does not apply to an application filed under Section 11 of the Act.

5. Since the date of the passing of the impugned order, this Court has delivered a ruling on the subject as to whether bar under Section 69 of the Partnership Act applies to any application under Section 11 of the Act. In **Dattatray N. Sawant vs. Nitida A. Mehta**¹, after an extensive review of

¹ ARBAP/47/14 dated 15 April 2015, Coram: S.J. Kathawalla, J.

the case law on the subject, this Court held that the bar under Section 69 of the Partnership Act applies only to a suit or a proceeding filed before a Court and that since a Judge hearing an application under Section 11 of the Act for appointment of an arbitrator under Section 11 of the Act is merely a designate of the Chief Justice and does not act as a Court, the bar under Section 69 of the Partnership Act does not apply to such application.

6. The question, thus, being no more *res integra*, there is no merit in the review petition. The impugned order was passed on an application under Section 11 and does not suffer from any mistake or error apparent on the face of the record. Even if it is accepted that non-registration of the petitioner firm was discovered by the review petitioner only after the impugned order was passed, the factum of such non-registration has no bearing on the maintainability of the application as held by our Court in the case of **Dattatray N. Sawant** (supra). I am bound by the decision in **Dattatray N. Sawant**. The review petitioner has been unable to point out any distinguishing feature in the facts of the present case.

7. The review petition is, accordingly, dismissed. There shall, however, be no order as to costs.

(S.C.GUPTE, J.)