

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 41 OF 2014

Alka Chandewar	...	Applicant
Versus		
Sovind Nathuji Chandewar	...	Respondent

Mr. Sameer Bhalekar for the Applicant.
Mr. Sovind N. Chandewar present in person.

CORAM : S.J. KATHAWALLA, J.
DATED : 27TH JANUARY, 2015

P.C.

1. The Applicant - Alka Chandewar has filed the above Arbitration Application against the Respondent - Sovind Nathuji Chandewar under section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for appointment of a sole Arbitrator to resolve the disputes arisen between the Applicant and the Respondent under the Partnership Deed dated 7th September, 1994.

2. According to the Applicant, under a Partnership Deed dated 7th September, 1994 (the said Agreement) she and the Respondent (her husband) agreed to carry out business as developers in the name and style of M/s. Saraswati Developers. The said firm was registered on 25th June, 1997. As per the said Agreement, the Applicant and Respondent were to share the profits of the said firm equally. Under Clause 20 of the said

Agreement, the partners agreed to refer their disputes and differences to arbitration.

3. According to the Applicant, certain matrimonial disputes arose between her and the Respondent in the year 2003. In January, 2005 the Respondent left with his son leaving the Applicant to fend for herself and her daughter. The Applicant thereupon demanded her share in the profits of the said firm from the Respondent when she was informed that she was no longer a partner of the said firm and was not concerned with his business. The Applicant therefore through her Advocate issued a notice dated 3rd July, 2008 invoking Clause 20 of the said Agreement dated 7th September, 1994 and appointed Advocate Suresh Dikshit to act as the sole Arbitrator. Clause 20 of the said Agreement is reproduced hereunder :

“20. In the event of any dispute or differences that may arise at to the constructions or interpretation of any of the terms of this Deed, the same shall be referred to the Arbitration under the the provisions of the Indian Arbitration Act, 1940. Each of the parties shall appoint the arbitrator of their choice who in turn shall appoint an umpire. The umpire shall enter upon the reference and pronounce and award upon the arbitration. Once the award is pronounced the same is conclusive and binding upon the parties hereto”.

4. In response to the said notice dated 3rd July, 2008 received from

the Advocate for the Applicant, the Respondent contended that the said partnership was dissolved with effect from 27th January, 2004. The Respondent refused to concur in the appointment of Advocate Dikshit as the sole Arbitrator and to have the disputes between the parties referred to arbitration.

5. The Applicant therefore, filed Arbitration Petition No.86 of 2010 for appointment of an Arbitrator under Section 11 of the Act. Though the Respondent was served with the Arbitration Application, he failed to appear before the Court. In view thereof, by an order dated 4th March, 2011 this Court (Coram : S.J. Vazifdar, J.) appointed Mr. Justice M.S. Rane (Retired) as a sole Arbitrator and disposed of the said Arbitration Application.

6. According to the Applicant, in view of the directions of the learned Arbitrator, she filed her Statement of Claim and the Respondent filed his Written Statement. Issues were framed by the learned Arbitrator on 5th March, 2012. The Respondent filed four interim Applications before the Arbitral Tribunal viz. (a) Interim Application for suspension of arbitral proceedings, (b) Interim Application for a declaration that prayer clause (a) of the Claim Petition could not be tried by the Arbitrator, (c) Interim Application for dismissing the Claim Petition as being barred by Law of Limitation and (d) Interim Application for an order that the claim is

barred by time.

7. According to the Applicant, the Applicant too also filed three Interim Applications before the learned Arbitrator for inspection of books of accounts, for amendment of Statement of Claim and for appointment of Court Receiver, High Court, for securing her 50% share and striking of defences of the Respondent.

8. According to the Applicant, during the pendency of the said proceedings, the Respondent by a Gift Deed dated 28th December, 2011 surreptitiously gifted hotel Kuber Palace (an asset of the Partnership Firm) to their son Alok Chandewar. The Applicant was therefore constrained to file an Interim Application before the Tribunal.

9. According to the Applicant, by an order dated 20th April, 2012 the learned sole Arbitrator allowed the Interim Application of the Applicant to amend the Statement of Claim. Interim Application of the Respondent for suspension of arbitration proceedings was dismissed and the Respondent was directed to pay cost of Rs.30,000/- to the Applicant. The learned Arbitrator held that other Applications filed by the Respondent will be decided at the final hearing of the disputes.

10. The learned Arbitrator granted certain interim reliefs in favour of the Applicant. The Respondent preferred an Appeal therefrom, which Appeal was admitted on 8th February, 2013 and the Application for

stay of the said order was allowed.

11. Thereafter, the Applicant filed her Affidavit of Evidence and Compilation of Documents before the learned Arbitrator and served copies of the same on the Respondent. The Learned Arbitrator fixed a meeting on 15th March, 2012 with due intimation to the Respondent for hearing of the main reference. However, the Respondent remained absent before the learned Arbitrator on 15th March, 2012. The hearing was adjourned to 12th April, 2013, when the Respondent once again failed to remain present. The hearing was thereafter, adjourned to 6th May, 2013. However, on 6th May, 2013, the Respondent made an Application before the learned Arbitrator to adjourn the meeting since he has preferred a Civil Application No. 24 of 2013 in Appeal No. 64 of 2012 for stay of further proceedings before the learned Arbitrator. In view thereof, the learned Arbitrator once again adjourned the meeting. Civil Application No. 24 of 2013 filed by the Respondent seeking stay of further proceeding before the learned Arbitrator was dismissed by this Court (Coram : Ranjit More, J.) by its order dated 5th August, 2013.

12. On 12th August, 2013 the Respondent filed his Affidavit of Evidence along with Compilation of Documents and also the Affidavit of Evidence of Mr. Alok Chandewar, the witness to be examined on behalf of the Respondent before the learned Arbitrator.

13. On 10th September, 2013 the Respondent filed an Application challenging the jurisdiction of the Arbitrator under section 12(3) and section 13(2) of the Act. In the said Application, it was contended that the Tribunal was biased and prejudiced towards the Respondent from the initial stage of the proceedings and requested the Arbitrator to withdraw from the reference. The learned Arbitrator by his letter dated 1st October, 2013 resigned in view of the allegations made by the Respondent.

14. The Applicant has therefore filed the present Application under section 11 of the Act to appoint a new Arbitrator to resolve the disputes arisen between the parties out of the said Agreement dated 7th September, 1994.

15. The Respondent has filed his Affidavit in Reply and has contended that the Arbitration Application be dismissed since the earlier order dated 4th March, 2011 appointing Mr. Justice M.S. Rane (Retired) as the Sole Arbitrator was passed ex-parte and further that in a Criminal Complaint filed by the Applicant in the year 2005 against the Respondent, she had made allegations of fraud and forgery against the Respondent qua the deed of dissolution of the partnership and had also stated that arbitration proceedings would not lie in the matter. It is also submitted that there was a delay in filing of the arbitration proceedings.

16. I have considered the aforestated submissions made on behalf of

the Applicant and by the Respondent appearing in person.

17. The Applicant had earlier filed an Application bearing No. 86 of 2010 under section 11 of the Act for appointment of a sole Arbitrator to decide the disputes arisen between the parties under the said Agreement dated 7th September, 1994. The said Application No.86 of 2010 was disposed of by an order dated 4th March, 2011. By the said order, Mr. Justice M.S. Rane (Retired) was appointed as a sole Arbitrator. The Respondent failed to appear before the Court when the said order was passed. The Respondent admittedly did not make any Application for setting aside the order dated 4th March, 2011 in the last three years and therefore, at this stage, cannot be heard to make a grievance that the said order was passed in his absence or that all the relevant facts were not placed before the Court. Therefore, the contention of the Respondent that the present Application deserves to be dismissed on the ground that the order dated 4th March, 2011 was an ex-parte order stands rejected.

18. The Criminal Complaint filed by the Applicant was in the year 2005, wherein she did take a stand that the arbitration proceedings would not be maintainable. However, the Applicant does have a right to subsequently change her stand and file arbitration proceedings, if so advised. The Applicant in fact served a notice through her Advocate as far back as in the year 2008 invoking Clause 20 of the Agreement dated 7th

September, 1994 and nominating Advocate Suresh Dikshit as a sole Arbitrator. The Respondent refused to refer the dispute to arbitration. The Applicant therefore filed Arbitration Application No. 86 of 2010 before this Court and Mr. Justice M.S. Rane (Retired) was appointed as a sole Arbitrator. The Respondent and the Applicant filed Interim Applications before the learned sole Arbitrator, who has passed his orders therein. The Learned Arbitrator inter alia held that the issue pertaining to the claim of the Applicant being time barred shall be decided at the time of final hearing and disposal of the arbitration proceedings. The Respondent thereafter filed his Affidavit of Evidence along with Compilation of Documents and also filed the evidence of his witness. After having filed his evidence and the evidence of his witness, he moved this Court for stay of the arbitration proceedings, which was rejected by an order dated 5th August, 2013. Not being successful in stalling the Arbitration proceedings, the Respondent adopted the easiest route, i.e. to make allegations against the sole Arbitrator thereby literally forcing him to resign as an Arbitrator. The Respondent had been a party to framing of issues including the issues pertaining to fraud and forgery before the learned Arbitrator Mr. Justice M.S.Rane (Retired) and has thereafter, filed his evidence before the learned Arbitrator and also the evidence of his witness. The Respondent, therefore, now cannot be heard to say that

there can be no arbitration in the matter since there are allegations of fraud and forgery. It is also pertinent to mention in this context that in a recent decision of the Hon'ble Supreme Court in *Swiss Timing Ltd. v. Organising Committee, Commonwealth Games 2010, Delhi*¹ the Hon'ble Supreme Court observed that there is no inherent risk to the parties in permitting arbitration to proceed, even with criminal proceedings running simultaneously. In view thereof, this contention of the Respondent is also rejected.

19. It is therefore clear that the parties have agreed to refer their disputes arising out of the Agreement dated 7th September, 1994 Arbitration. By an order dated 4th March, 2011, Mr. Justice Rane (Retired) was appointed as the Sole Arbitrator to decide the disputes between the parties. The Arbitration proceedings reached the stage where parties filed their evidence before the learned Arbitrator. Infact, the Respondent also filed the evidence of his witnesses before the learned Arbitrator. The Respondent made serious allegations against the learned Arbitrator, who has thereafter resigned. The Applicant is justified in moving the present Application for appointment of a new Arbitrator under Section 11 of the Act. Hence, the following order :

- i. Mr. Chetan Kapadia, Advocate is appointed as a sole Arbitrator

1 2014 (6) SCC 677

to decide the disputes of the Applicant and the Respondent arising out of the Deed of Partnership dated 7th September, 1994.

- ii. The learned Advocate shall continue with the proceeding from the stage where the earlier Arbitrator recused himself from the proceeding
- iii. The above Arbitration Application is accordingly disposed of.
- iv. Respondent to pay costs of this Application to the Applicant.

(S.J. KATHAWALLA, J.)