IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 453 OF 2015

M/s.Ravi Realtors ….. Petitioner

VERSUS

Shreedhar Gopal ….. Respondent

Mr.H.S.S.Murthy, i/b. Mr.Abhishek Patil for the Petitioner.

Mr.Sharan Jagtiani, Mr.Shilpan Gaonkar, a/w. Mr.Suraj Iyer, i/b. Ganesh & CO. for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 28th APRIL, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 13th December, 2014 thereby allowing the claims made by the respondent partly. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner herein was the original respondent whereas the respondent was the original claimant in the arbitral proceedings. The respondent was a partner in the petitioner firm. It is not in dispute that on 1st November, 2007 under the deed of retirement, the respondent retired from the petitioner firm w.e.f. 1st November, 2007. Under the said deed of retirement, the respondent became entitled to recover various amounts due and payable to the respondent by the petitioner firm. It was agreed that the said amount would be paid to the respondent on or before 31st March, 2009.

3. It is the case of the petitioner that though under the said deed of retirement the respondent become entitled to recover the said amount on or before 31st March, 2009, the respondent raised demand for the first time vide his letter dated 23rd February, 2012.

4. Learned counsel appearing for the petitioner submits that the petitioner was a family concern. Though the petitioner had agreed to pay the dues to the respondent on or before 31st March, 2009, since the respondent did not raise any demand for the said amount prior to 23rd February, 2012, the petitioner was not liable to pay any interest to the respondent. He submits that during the period between 2009 and 2011, the respondent was being paid a sum of Rs. 50,000/- to Rs.60,000/- in cash which was not accounted for by the respondent and no credit thereof was given by the learned arbitrator while computing the period of interest from 2009 till the payment.

5. It is submitted by the learned counsel for the petitioner that there was no provision for payment of interest under the deed of retirement. Unless there was a finding rendered by the learned arbitrator that the amount was withheld with wrongful intention of the petitioner, the learned arbitrator could not have awarded any interest in favour of the respondent from the due date till the date of demand.

6. Learned counsel for the petitioner submits that the learned arbitrator could not have awarded interest at the rate of 18% per annum in favour of the respondent.

7. Learned counsel appearing for the respondent on the other hand supported the findings rendered by the learned arbitrator. It is submitted that in respect of

the payment of Rs. 50,000/- to Rs.60,000/- which was alleged to have been paid to the respondent, the petitioner for the first time during the course of the cross examination of the witness examined by the respondent made such allegation. No such issue was raised by the petitioner in the written statement. He submits that the petitioner had used the money due and payable to the respondent since 2007 till the payment. Though the respondent had demanded interest from 2007 itself, the learned arbitrator did not grant the interest from 2007 upto the date of payment. He submits that though the respondent had demanded interest at the rate of 24% per annum, the learned arbitrator had granted interest at the rate of 18% considering the provisions of the partnership deed under which the partnership firm had agreed to pay interest at the rate of 18% to the partners on the capital account. He submits that the learned arbitrator has rendered a findings of fact which are not perverse and thus this court can not interfere with such findings of fact under section 34 of the Arbitration and Conciliation Act 1996.

8. A perusal of the deed of retirement clearly indicates that the parties had already drawn all of the accounts as on 31st October, 2007 and had worked out the amount due and payable to the respondent. However, it was agreed by and between the parties under the said deed of retirement that the respondent would be paid the said amount on or before 31st March, 2009. The learned arbitrator in my view has rightly rejected the claim for interest from 2007 till 31st March, 2009.

9. It is not in dispute that the petitioner firm had disclosed the principle amount of Rs.1,55,75,500/- in the books of account and the balance-sheet of the petitioner payable to the respondent. The only submission of the petitioner is that since there was no demand for the payment of the said amount under the retirement deed till 23rd February, 2012, the learned arbitrator could not have awarded interest from the

due date till the demand was made. Learned counsel for the petitioner submits that if the respondent would have demanded the amount, the petitioner would have paid the same and thus no interest could have been awarded for the said period.

10. It is not in dispute that the so called adjustment of Rs.50,000/- to Rs.60,000/- alleged to have been paid in cash to the respondent was not pleaded in the written statement filed by the petitioner before the learned arbitrator. A perusal of the award indicates that though no such plea was raised by the petitioner in the written statement, the learned arbitrator has still dealt with this issue raised by the petitioner for the first time at the stage of cross examination. In the impugned award the learned arbitrator has rendered a finding that the petitioner had failed to prove that the payment of Rs.50,000/- per month was paid firstly by the father in law of the respondent herein and thereafter by the petitioner. The learned arbitrator held that there was no evidence of adjustment and/or appropriation of the said amount against the payment of the said amount of Rs.1,55,75,000/- by the petitioner to the respondent herein. It is also found by the learned arbitrator that there was no reference to the said payment of Rs.50,000/- in the deed of retirement entered into between the parties. In my view there is thus no merit in this submission of the learned counsel for the petitioner that the learned arbitrator ought to have considered the payment of Rs.50,000/- per month while considering the prayer for payment of the amount due and payable by the petitioner or atleast while awarding the interest in favour of the respondent.

11. Insofar as submission of the learned counsel for the petitioner that since there was no demand made by the respondent prior to 23rd February, 2012 and thus no interest from 2009 till the date of demand could have been awarded by the learned arbitrator is concerned, it is not disputed by the petitioner that the

petitioner was liable to pay the principal amount to the respondent. Even in the pleadings before the learned arbitrator and in their books of account it was disclosed that the petitioner was liable to pay the said amount. It is the case of the petitioner himself that during the period between 2009 and till 2011, the petitioner had allegedly paid some amount in cash to the respondent. In my view merely because the respondent had not raised any demand for the period of two years, liability of the petitioner to pay the said amount did not stop. The petitioner had never denied its liability at any point of time nor offered to pay the said amount to the respondent.

12. A perusal of the award indicates that the learned arbitrator has rendered a finding that the petitioner has used the said principle amount due and payable to the respondent admittedly from the due date till the said amount was deposited by the petitioner in this court pursuant to the order passed by this court in the petition filed under section 9 of the Arbitration and Conciliation Act, 1996. A perusal of the award also indicates that while awarding the interest at the rate of 18% in favour of the respondent, the learned arbitrator has placed reliance on Clause 6 of the deed of retirement of 14th December, 1993 which inter alia provided that the firm would pay interest at the rate of 18% per annum to the partners bringing additional capital to the firm. Since the petitioner has used the money due and payable to the respondent and the firm was liable to pay interest at the rate of 18% to the partners bringing additional capital, in my view if the learned arbitrator has considered that clause for the purpose of awarding interest at the rate of 18% per annum on the amount wrongfully withheld by the petitioner, no infirmity can be found with the impugned award insofar as period of interest and the rate of interest is concerned. Under section 31(7) (a) of the Arbitration and Conciliation Act, 1996, the learned arbitrator is empowered to award interest at the reasonable

rate and from the due date till the payment absolutely at his discretion. In my view, the discretion used by the learned arbitrator in this case is absolutely in order and no interference is warranted with the discretion used by the learned arbitrator.

13. A perusal of the award indicates that the learned arbitrator has considered the entire pleadings, evidence and has interpreted the terms of the retirement deed. In my view the findings rendered by the learned arbitrator are not perverse and thus no interference is permissible under section 34 of the Arbitration and Conciliation Act, 1996. The interpretation of the retirement deed by the learned arbitrator is a possible interpretation and cannot be substituted by another interpretation by this court. In my view arbitration petition is devoid of merits.

14. I, therefore, pass the following order :-

> Petition is dismissed with cost quantified at Rs.25,000/- which shall be paid by the petitioner to the respondent within two weeks from today.

[R.D. DHANUKA, J.]