

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION (L) NO. 525 OF 2015**

Abdul Haque Abdul Khalique Khan

...Petitioner

Vs.

Shaikh Tanvir Ahmed & Ors.

...Respondents

Mr.Vishal Kanade with Uzair Kazi and Preeti J. Cheda i/b. M/s.Divya Shah Associates for the Petitioner.

Mr.S.C. Naidu with Mr.Sayeed Mulani i/b. M/s.Mulani & Co. for Respondent No.4.

CORAM : S.C. GUPTE, J.**17 APRIL 2015****P.C. :**

The arbitration petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The grievance of the Petitioner in the present arbitration petition is as follows :

2 The Petitioner and Respondent Nos.1 and 2 are partners of the third Respondent firm under a Deed of Partnership dated 22 February 2008. The business of this partnership firm included redevelopment of a certain property at Shirley Mala Road, Bandra (West) in Mumbai. This property was purchased originally by Respondent Nos.1 and 2 under a Deed of Conveyance. The Deed of Partnership executed between the parties *inter alia* records that the consideration paid by Respondent Nos.1 and 2 for the said property shall be treated as the capital contribution of Respondent Nos.1 and 2 in the firm. In other words, the property was brought into the partnership hotchpot. Disputes thereafter arose between the parties. By an order dated 18 November 2011, this Court referred the disputes to a sole arbitrator. The arbitration reference commenced before the sole arbitrator. By an order dated 26 December 2011, the sole arbitrator directed

status quo to be maintained in respect of the suit property. That order has since been continued from time to time. It is the case of the Petitioner that during the pendency of the arbitral reference and in the face of the status quo order passed by the sole arbitrator, Respondent Nos.1 and 2 purportedly transferred the suit property to Respondent No.4 herein under a Deed of Conveyance dated 16 April 2013. The Petitioner claims to have learnt about this deed in the month of February 2015 and has now approached this Court seeking an injunctive relief against Respondent No.4. It is the case of the Petitioner that since Respondent No.4 is not a party to the arbitration agreement between the Petitioner and Respondent Nos.1 and 2, in the facts of the present case, it is necessary to have a Court Receiver appointed of the suit property under Section 9 of the Arbitration and Conciliation Act, 1996.

3 At the hearing of the arbitration petition, Mr.Naidu, learned Counsel appearing for Respondent No.4 submits that his client has already initiated redevelopment process and has even proceeded to partly demolish the structure standing on the suit property. Learned Counsel, however, submits that pending the arbitration reference between the Petitioner and Respondent Nos.1 and 2, his client shall agree to maintain a limited status quo in respect of the suit property, provided the Court designates some reasonable time within which the arbitration reference would be concluded. Learned Counsel submits that his client may be permitted to complete demolition of certain rooms, which have already been partly demolished and which were in occupation of tenants and surrendered to Respondent No.4. Learned Counsel submits that his client may also be permitted to proceed with the compliance of various IOD conditions, but shall not demolish the front portion of the building standing in the suit property, which comprises of 7 shops on the ground floor and residential premises on the first floor, or undertake any redevelopment work for a reasonable time within which the Petitioner and Respondent Nos.1 and 2 may conclude the hearing of the arbitration reference. Learned Counsel further submits that in the meantime, his client may be permitted to defend the suits filed by tenants of the shop premises in the front portion of the building.

4 Learned Counsel for the Petitioner has no objection to the maintenance of such limited status quo by Respondent No.4 and that if such status quo is maintained, he does not press prayer clause (a) at this stage. Respondent Nos.1 and 2 do not show any cause to the reliefs sought by the Petitioner. There is no reply filed by these Respondents. Any way, *interse* disputes between these Respondents and the Petitioner are already subject matter of the arbitration proceedings as noted above, and it is basically Respondent No.4, who has to show cause to the present petition.

5 In the premises, the following order is passed by consent of the Petitioner and Respondent No.4 :

(i) Respondent No.4 shall have liberty to apply to MCGM for permission, approval, sanction, renewal, amendments, and compliances of IOD conditions and obtain Commencement Certificate for Redevelopment of the Suit Property without claiming any equity in its favour by reason of such permissions, sanctions, etc. or their compliance by Respondent No.4.

(ii) Respondent No.4 declares that pursuant to orders under Section 354 of MMC Act and permission dated 28 January 2015 from the office of the Sub-Divisional Officer, Mumbai Western Suburban, Respondent No.4 has partly demolished Room No.4 being residential premises of tenant / occupant Ms. Mysaa Salim Shaikh on the 1st floor of the rear portion of the building “Antonio Rest” and partly demolished Room No.5 on the ground floor of the said rear portion in possession of Respondent No.4 to the extent of removing electric wiring and plumbing, puncturing the ceiling slab at different places, removing windows and demolishing partition walls of Room No.4 and Room No.5 on the ground floor.

(iii) Respondent No.4 states that the portion of ceiling and walls of Room No.5 which is still standing, i.e. which has not been demolished, poses an eminent danger to life, limb and property and Respondent No.4 requests to be permitted to demolish the balance portion of the said structure till ground level without claiming any equity and at its own costs.

(iv) According to this request, Respondent No.4 is permitted to undertake demolition of room No.5 of the rear portion of the building "Antonio Rest" till ground level only.

(v) Respondent No.4 states that the front portion of the building "Antonio Rest" has 7 Commercial premises / shops on the ground floor which are occupied by the respective tenants as on date. The first floor of the front portion has three tenants occupying residential premises who have presently vacated and handed over peaceful and vacant possession of their respective tenanted premises to Respondent No.4.

(vi) Respondent No.4 undertakes to this Court not to demolish the front portion of the building "Antonio Rest" comprising of 7 shops on the ground floor and residential premises on the 1st floor (presently vacant) or undertake any redevelopment work for a period of eight months from the date of this order. Respondent No.4 shall not create any third party rights, title or interest or create leave and license in respect of any portion of the said property, viz.: property being ALL THAT Piece And Parcel Of Land, hereditament and premises together with structures/buildings standing

thereon situate and lying between 33, Shirley Mala Road, Bandra (West), Mumbai 400 050 bearing CTS No. C-1000, C-1001 and C-1002 admeasuring about 434.8 sq. meters, equivalent to 520 square yards of village Bandra, Taluka Andheri MSD for a period of 8 months from today.

(vii) Respondent No.4 undertakes not to commence any redevelopment work on the suit property for a period of eight months from the date of this order, save and except demolition of the balance structure of room No.5 of the rear portion of the building upto ground level.

(viii) Respondent No.4 shall be entitled to defend suit/s filed by tenants of the shop premises in the Court of Small Causes Court at Mumbai and enter into settlement/ compromise / agreement with the said tenants in respect of handing over vacant possession of the existing premises, providing permanent alternate accommodation in lieu thereof in the proposed new construction and terms and conditions thereof without claiming any equity for any steps taken in pursuance of this liberty.

(ix) All statements and undertakings referred to above are accepted. These statements and undertakings shall be without prejudice to the rights and contentions of the respective parties.

(x) The sole arbitrator hearing the arbitration reference between the Petitioner and Respondent Nos.1 and 2 is requested to complete the hearing of the arbitration reference and declare his award within a period of eight months from today.

(xi) By consent, the order dated 9 April 2015, which wrongly records grant of ad-interim relief till 17 April 2015, is substituted by a statement made on behalf of Respondent No.4 regarding maintenance of status quo. The order will, accordingly, read as follows :

“ Learned Counsel for Respondent No.4 states that without prejudice to his rights and contentions, Respondent No.4 shall maintain status quo till 17 April 2015.”

(xii) The Arbitration Petition is disposed of in the above terms.

(xiii) Liberty to the parties to apply.

(S.C. GUPTE, J.)