

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1258 OF 2015

Mahesh Inder Bhatia

..... Petitioner

VERSUS

M/s.Sai Constructions & Anr.

..... Respondents

Ms.Alisha Lambay, a/w. Mr.R.K.Ramani, Mr.Vikas Singh, Mr.Praful Salvi, i/b.Lambay & Co. for the Petitioner.

Mr.Rajiv Narula, a/w.Ms.Shweta Doshi, i/b.Jhangiani Narula & Associates for Respondent No.2.

CORAM : R.D. DHANUKA, J.

DATED : 2nd SEPTEMBER, 2015

P.C.

By this petition filed under section 9 of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of the Court Receiver and injunction in respect of the business and assets of the registered partnership firm i.e. M/s.Sai Constructions, respondent no.1 herein.

2. It is not in dispute that the petitioner and the respondent were entitled to 50% shares in the respondent no.1 firm. The petitioner has issued a notice of dissolution of the suit firm on 24th July, 2015. The respondent no.1 firm has entered into an development agreement with a third party, under which the respondent no.1 firm was entitled to 45% share whereas such third party was entitled to 55% shares in the constructed flats and other tenaments.

3. The petitioner has applied for interim measures before this court by filing

Arbitration Petition No.1271 of 2014. The respondent no.2 also filed a separate Arbitration Petition No.938 of 2014. By an order dated 4th December, 2014, S.J.Kathawalla, J. has referred the disputes and differences arising between the parties out of the partnership agreement dated 5th January, 2009 to the sole arbitration of Mr.Justice S.K.Shah, former judge of this court and directed that the learned arbitrator shall endeavour to pass his award within a period of six months from the date of the first meeting.

4. By the said order, this court has directed that all the cheques received in the name of the respondent no.1 by the respondent no.2 shall be deposited in the partnership account being a current account described in the said order and the particulars of the said cheques deposited by him in the said account shall be forwarded by him every fortnight to the advocate for the petitioner herein.

5. By the said order, this court has also directed that the cheques in respect of electricity bills, rent, raw material purchased, labour, transport and contractor bills and amounts payable to the Municipal Corporation shall be made by the cheques signed by the petitioner and the respondent no.2. It is also made clear that the petitioner shall be at liberty to sign any of the cheques under protest and raise the issue qua the validity of the said payments before the learned arbitrator and the decision of the learned arbitrator on the issue as to whether the payments made are valid or otherwise shall be final.

6. This court also recorded the statement made by the respondent no.2 that there were no flats with regard to which sale agreements had not been executed. This court recorded the undertaking of the respondent no.2 to forward photocopies of the agreement executed by the partnership firm with the flat purchasers to the

advocate representing the petitioner within seven days from the date of the said order. This court also granted liberty to both the parties to apply before the learned arbitrator for any further ad-interim/interim reliefs under section 17 of the Arbitration and Conciliation Act, 1996.

7. Learned counsel appearing for the respondents states that the respondent no.2 has already complied with the said order directing the respondent no.2 to forward photocopies of the agreement by the partnership firm with the flat purchasers to the advocates of the petitioner.

8. Learned counsel appearing for the petitioner however submits that the respondent no.2 has inflated various bills and have received various amounts in cash from the flat purchasers and has not given the true and correct accounts of the consideration received in the name of the suit firm from the flat purchasers. It is submitted by the learned counsel that the petitioner has not been allowed to visit the site on which the respondent no.1 firm was carrying out the construction. It is submitted that since the firm has been already dissolved by the notice dated 24th July, 2015 by the petitioner, this court shall appoint a Court Receiver to supervise the ongoing construction and to verify the bills of expenses propounded by the respondent no.2.

9. Mr.Narula, learned counsel appearing for the respondent no.2 on the other hand submits that the petitioner has already filed an application under section 17 before the learned arbitrator. My attention is invited to the order passed by the learned arbitrator in the application filed under section 17 by the petitioner herein. The learned arbitrator has already directed the respondent no.2 to allow the architect of the petitioner to visit the site of the construction for surveying the

property after giving prior intimation to the respondents. The learned arbitrator has made it clear that the representative can go to the site as and when necessary and the respondent shall not object to its visit to the site. It is made clear that the petitioner's representative shall not indulge into the activities prejudicial to the development of the property. The learned arbitrator has directed that as and when the respondent forwards the cheques to the petitioner for his signature, the same shall be accompanied by supporting bills. It is not in dispute that the said order dated 10th March, 2015 passed by the learned arbitrator is operated until further orders and is in force.

10. Mr.Narula, learned counsel appearing for the respondents also invited my attention to some of the annexures annexed to the statement of claim filed before the learned arbitrator by the respondent no.2 who is claimant. It is submitted that in the statement of claim, the respondent no.2 has also disclosed the amount receivable under various agreements entered into by the suit firm with the flat purchasers and also the amounts already received.

11. A perusal of the averments made in the arbitration petition clearly indicates that it is grievance of the petitioner that since 2010, the respondent no.2 has not permitted the petitioner to take active part in the business of the partnership firm. The petitioner has also placed reliance on the correspondence exchanged between the parties from 2010 onwards. The respondent no.2 has already made a statement before this court that all the tenements which were to be received by the suit firm under the development agreement have been already received and sold by the suit firm. In my view thus no case is made out for appointment of the Court Receiver in the present proceedings filed under section 9. Pursuant to the order passed by Shri S.J.Kathawalla, J. both parties are already permitted to apply for further ad-

interim measures before the learned arbitrator under section 17 . The parties have already filed such proceedings before the learned arbitrator.

12. Insofar as grievance of the petitioner that the respondent no.2 has received certain amounts in cash from the flat purchasers and/or bills in respect of various expenses claimed by the respondent no.2 are inflated or that the proper amounts are not reflected in the books of account is concerned, in my view all these grievances will relate to the accounts and the actual profit and loss of the firm which will have to be adjudicated upon by the learned arbitrator after recording evidence of both the parties. The correctness of such allegations cannot be gone into by this court in this proceedings at this stage. No case is thus made out for grant of any interim measures by the petitioner in this case.

13. It is made clear that the petitioner would be entitled to file counter claim before the learned arbitrator in view of the dissolution of the suit firm and to seek various reliefs in the counter claim arising out of the partnership deed. Mr.Narula, learned counsel for the respondents have no objection if any such counter claim is made by the petitioner before the learned arbitrator and if any such counter claim is filed, respondents shall not raise any issue of the jurisdiction of the learned arbitrator in entertaining such counter claim. It is however made clear that if any counter claim is made, the same shall be disposed of by the learned arbitrator on its own merits.

14. Petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]

CERTIFICATE

“ I certify that this order uploaded is a true and correct copy of original signed order.”

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