IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 645 OF 2016

Sudhakar Sharma .....Petitioner

V/s.

Shashi T. Nair & Ors. .....Respondents

* * * * * *

Mr. Sabir Kumar a/w. Mr. Budhaditya Bhattacharya, Advocate for the petitioner.

None for the respondents.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 8TH SEPTEMBER, 2016.

P.C. :-

1). This petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 is directed against the award dated 9th October, 2015. The petitioner was the claimant before the Arbitral Tribunal.

2). The mother of the petitioner, one Krishna Sharma and respondents no.1 and 2 were the partners of a firm by name, M/s. Hercules Forgings Ltd. The initial deed of partnership executed between the parties was on 2nd March, 1988. According to respondents no.1 and 2, on 29th January, 2004 a fresh deed of partnership was executed superseeding the earlier partnership deed. Krishna Sharma expired on 29th November, 2009 i.e. more than 5 years after execution of the second deed of partnership firm. The petitioner had sent notice to respondents no.1 and 2 for admitting himself as a partner in a partnership firm based on the first deed of partnership dated 2nd March, 1988. Since the subsequent deed of partnership did not provide for admitting heir of a deceased partner to the partnership firm, respondents no.1 and 2 refused to admit him as a partner in the firm and claimed that the petitioner was entitled to the value of share of Krishna Sharma on the Accounts of the firm being taken. The petitioner then filed proceedings under Section 9 of the Arbitration Act, seeking interim relief. At the instance of the petitioner then, the Arbitrator came to be appointed as the sole Arbitrator to resolve the dispute between the parties. The reliefs primarily sought from the Arbitral Tribunal was for a declaration that the subsequent partnership dated 22nd January, 2004 is null and void and that the partnership deed dated 2nd March, 1988 is valid, subsisting and binding on the parties and for a direction to respondents no.1 and 2 to admit the petitioner as a partner in the firm. In the alternative, the petitioner sought a declaration that the firm stands dissolved and for taking Accounts of the firm after due inventory of the Assets of the firm. The respondents contested the arbitral proceedings contending that, the deed of partnership dated 22nd January, 2004 was duly executed by all the partners and since there was no clause in that partnership deed entitling the legal representative of the deceased partner to get admitted as a partner in the firm, the petitioner cannot be admitted to the firm. According to them, under the subsisting partnership deed, in case of death of any partner, the share of the deceased partner is to accrue to the surviving partner in proportion to their respective share subject to payment to the legal representative of the deceased partner, the amount standing to the credit of the deceased partner's Capital Accounts and the profits, if any, for the period of that year from the date of commencement of the year till the death of the partner. Respondents no.1 and 2 claimed that, in accordance with this Clause, they had got the assets of the firm valued and offered a sum of Rs.23,62,820/- to the petitioner who had refused to accept the same. Respondents no.1 and 2 also filed a counter-claim claiming an amount of Rs.50,00,000/- as the loss suffered by them on account of the alleged unlawful and illegal acts of the petitioner. Respondents no.3 and 4 are the other heirs of Krishna Sharma who have relinquished their rights as the heirs of Krishna Sharma in favour of the petitioner. They did not participate in the arbitral proceedings. During the course of the arbitral proceedings, on 12th February, 2013 consent terms were arrived at between the parties in which the petitioner accepted that the partnership deed dated 29th March, 2014 stands proved and it supersedes the partnership deed dated 2nd March, 1988. Thus, the rights of the parties would be governed by the partnership deed dated 29th January, 2004. Respondents no.1 and 2 gave up their entire counter claim. It was further agreed that, respondents no.1 and 2 would pay to the petitioner a sum of Rs.23,62,820/- on/or before 15th March, 2016 and in the event of failure of payment of amount within that time, pay interest at the rate of 12% p.a. from the date of the consent terms till the final amount is paid. The parties also agreed for appointment of Commissioners for Taking Accounts and recommended the names of the Commissioners. On the next date, before the learned Arbitrator, Commissioners were appointed for (i)taking general Accounts, (ii) for valuation of the plant and machinery of the partnership firm, and (iii)valuation of the land and the building of the partnership firm. All the three Commissioners submitted their report in due course. In the meantime, the petitioner sought to challenge the consent terms and partnership deed dated 29th January, 2004. The challenge of the petitioner was not accepted and the arbitral proceedings continued on the basis of the consent terms. The learned Arbitrator has considered all the three reports and by the impugned Award, directed respondents no.1 and 2 to pay the petitioner a sum of Rs.21,80,701/- with interest at the rate of 10% p.a. from 19th September, 2011 till 19th October, 2014 after deducting amount of Rs.1.5 lacs.

3). Mr. Kumar, the learned Advocate appearing for petitioner challenges the Award contending that the Arbitral Tribunal could not have included the land taken on lease from MIDC because according to the petitioner, the land was taken on lease by all the three partners in their individual capacity and not by the partnership firm M/s. Hercules Forgings. Stating reasons at para-26 of the Award, the learned Arbitrator has considered this contention and rejected the same. The learned Arbitrator has noted that this dispute is raised for the first time by the petitioner before the Arbitral Tribunal at the time of the arguments. Based on the No-Objection Certificate dated 19th May, 1988 issued by the CEO for MIDC to M/s. Hercules Forgings, the learned Arbitrator has held that the lease of the land was in favour of the partnership firm and not to all the three partners individually. The NOC states that, it was issued to M/s. Hercules Forgings for the Unit situate at Plot No.C-10, Anand Nagar, Ambarnath Industrial area. With this finding, the learned Arbitrator has included the value of the land falling to the share of Krishna in the amount of the Award. Mr. Kumar, submits that this finding is not correct if one reads the lease deed which specifically refers to the three partners as the leasees. He refers to the clause in the agreement i.e. Clause (bb) which provides that, in the event of death of any of the leasee, the person or persons to whom that title shall be transferred as heirs otherwise. It has been further submitted that, it should be open for the petitioner to file appropriate proceedings for declaration of his leasehold rights to the properties in question. Even if the argument is to be accepted, the petitioner became entitled to leasehold rights in the year 2009 on the death of his mother. Till date, he has not filed any proceedings for declaration of his leasehold rights as claimed by him. Consequently, any such proceeding to be filed in the Civil Court has become barred by the law of limitation. Therefore, that cannot be put forth as challenge to the arbitral award. In any case, the view taken by the Arbitral Tribunal is a probable view based on the material before it. There is no case made out whatsoever under Section 34 of the Arbitration Act to challenge the Award. The petition is therefore dismissed.

(SMT. R.P. SONDURBALDOTA, J)