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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPLICATION No. 3 of 2014

Purnachand S/o Ramcharan Tank,
age 70 years occupation business
R/o R.M. 30, Veer Savarkar Colony,
M.I.D.C., Waluj, Aurangabad.

...PETITIONER

VERSUS

1. Vikas S/o Ratanlal Jain
age 45 years occupation business
R/o M/s. Jain Asbestos Products,
Plot No. C-2, Waluj, Aurangabad – 431 136
2. Shantilal S/o Ratanlal Jain,
age 52 years occupation and R/o as above. **...RESPONDENTS**

Mr Balbhim R. Kedar, Advocate for petitioner.
Mr S.V. Adwant, Advocate for respondents.

CORAM : NITIN .W. SAMBRE, J.

DATE : 2nd November, 2017

ORAL ORDER :

The petitioner is relying this claim on the Arbitration Agreement dated 29th August 1985, which provides for arbitration clause, which reads thus:

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“17. In case of differences of opinion, disputes, and conflicts between the partners regarding the business affairs of the firm or any other matter, the matter shall be referred to the arbitration of one arbitrator or two arbitrators as the Partners may mutually agree upon or decide and the decision of such arbitrator shall be final and binding on all the partners to the disputes. This reference shall be subject to the provisions of the Indian Arbitration Act, (No. X of 1940) or any statutory modification thereof for the time being in force.”

2. According to him, even though he has retired from the said partnership firm by virtue of the Retirement Deed dated 9th May 1989, the said retirement deed was never actively acted upon.

3. According to him, by issuing notice, the petitioner has sought to demonstrate that for last 28 years, his claim is not settled by the respondents qua his status as a partner in the Partnership Firm. He would draw support from the judgment of the Apex Court in the matter of **Today Homes and Infrastructure Private Limited Vs. Ludhiana Improvement Trust and another {(2014) 5 Supreme Court Cases 68}**, particularly, paragraph No. 13, which reads thus:

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“13. We have carefully considered the submissions made on behalf of the respective parties and we are of the view that the learned Designated Judge exceeded the bounds of his jurisdiction, as envisaged in SBP & Co. In our view, the learned Designated Judge was not required to undertake a detailed scrutiny of the merits and demerits of the case, almost as if he was deciding a suit. The learned Judge was only required to decide such preliminary issues such as jurisdiction to entertain the application, the existence of a valid arbitration agreement, whether a live claim existed or not, for the purpose of appointment of an arbitrator. By the impugned order, much more than what is contemplated under Section 11(6) of the 1996 Act was sought to be decided, without any evidence being adduced by the parties. The issue regarding the continued existence of the arbitration agreement, notwithstanding the main agreement itself being declared void, was considered by the seven -Judge Bench in SBP & Co. and it was held that an arbitration agreement could stand independent of the main agreement and did not necessarily become otiose, even if the main agreement, of which it is a part, is declared void.”

4. Per contra, Shri Adwant, learned Counsel for the

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respondents, submits that the Deed of Retirement was executed way back on 9th May 1989, which was duly acted upon, as appropriate intimation was given to the Registrar of Firms. According to him, there is no live claim apparent from the plain reading of submissions of the parties and, as such, he sought dismissal of the application.

5. Considered rival submissions. While dealing with the claim of rival parties for appointment of Arbitrator, in the case of **Today Homes**, cited supra, the Apex Court has observed that this Court need not to go into the merits of the matter but can carry out preliminary scrutiny to find out whether there exists live claim or not.

6. In the backdrop of such observations made in paragraph No. 13, what could be observed in the present case is that the Arbitration Agreement entered into between the parties, which is derived out of Partnership Deed dated 29th August 1985, has further underwent change, as the petitioner has executed a Deed of Retirement as is apparent from the deed dated 9th May 1989.

7. Since 9th May 1989 but for issuing notice demanding claims for last 28 years, that too, recently, petitioner has not taken

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any other steps. In the wake of above, in my opinion, it is difficult to accept at this stage on plain reading of the agreement that there exists the live claim, to be adjudicated by the Arbitrator, pursuant to the provision of Section 11 of the Act.

8. In view thereof, I hardly see any reason for invoking provision of Section 11 of the Arbitration Act. Application, as such, fails and dismissed.

9. However, petitioner is not precluded from filing suit if he so desires. If such suit is filed, Civil Court shall decide the same independent of being above referred observations made by this Court.

(NITIN W. SAMBRE, J.)

pjm