

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3572 OF 2017

Rajendra Dinkarraai Parekh	... Petitioner
Vs.	
Dinkar Hiralal Parekh & Ors.	... Respondents

Mr. Pralhad D. Paranjape, Advocate for the petitioner.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **10th July, 2017.**

P.C.:

Not on board. Upon mentioning, taken on board.

2. In this Writ Petition, the order passed by the District Judge-1 and Judge, Commercial Court, Pune on 16th January, 2017 in Miscellaneous Civil Appeal No. 386 of 2016 dismissing the Appeal thereby confirming the order dated 20th January, 2016 by the sole Arbitrator in Arbitration proceedings under challenge.

3. The petitioner is a respondent in the Arbitral Reference in dispute. The petitioner has filed the claim for the accounts of the partnership firm. In that dispute, the claimants have preferred Application for production of documents mainly pertaining to the

accounts and the said application was opposed by the respondent, i.e., present petitioner. The dispute being claim of income of the partnership business and essentially for rendition of accounts. The learned Arbitrator allowed the Application. The challenge was given to that order by the petitioner in Miscellaneous Appeal No. 386 of 2016 and the same was dismissed.

4. The learned counsel for the petitioner has submitted that the sole Arbitrator did not consider the contentions raised by the petitioner in his reply wherein the petitioner has denied specifically in paragraph 2 that the petitioner/respondent is not in possession of those documents but on the contrary, the claimants are in possession and in custody of the documents. The learned counsel has further submitted that when the petitioner is not in custody of those documents, then from where the petitioner is going to produce the documents. The learned Arbitral Tribunal as well as the learned District Judge have lost sight of this fact and so the order of production of documents is passed against the petitioner. He further submitted that if at all this order is not set aside and this issue is not heard on merits, then the petitioner may suffer and the award may be passed against him.

5. After going through the impugned order of the learned sole Arbitrator and learned District Judge, Application preferred by the claimants and the reply in respect of production of documents, it is to be noted that this issue cannot be decided at this stage in this Writ Petition. The arbitral proceeding before the Sole Arbitrator pertains to claim of amount and rendition of accounts. If at all this issue is taken up before this Court, while deciding the legality of the orders, this Court will have to go into the facts as to in whose custody the documents are and which party was required to keep the accounts etc. and it will frustrate the purpose of the arbitration. Therefore, this issue is to be dealt with and decided by the learned Arbitrator. However, this issue may be raised by the petitioner if required, if the arbitral award is challenged by him.

6. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)