SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION (L) NO. 11 OF 2017
WITH
NOTICE OF MOTION (L) NO. 29 OF 2017
WITH
NOTICE OF MOTION (L) NO. 31 OF 2017
WITH
NOTICE OF MOTION (L) NO. 32 OF 2017

Pinakin Dineshchandra Shah …Petitioner

Versus

Praful Amidas Mehta & Ors …Respondents

Mr Zubin Behramkamdin, *a'w Dhiren Shah, Jeniffer Michael and Jayesh Rathod, i/b Dhiren Shah , for the Petitioner and for the Applicant in NMCDL/29/17.*

Mr Pravin Samdani, Senior Advocate, *with Simil Purohit, SB Pawar and Swati Sawant, i/b SK Legal Associates, for the Respondents Nos. 1 & 2.*

Mr Mayur Khandeparkar, *i/b Mehul A Shah for Respondent No. 3, in NMCDL/29/17.*

Mr Farhan Dubash, *i/b Suhas Patil, for the Respondent No. 3.*

CORAM: G.S. PATEL, J

DATED: 7th February 2017

PC:-

1. There was an order of 19th January 2017 at the ad-interim stage. Since then Affidavits in Reply and Rejoinder have been filed. I have heard the parties. I am not inclined to grant any relief in this Petition.

2. That there is an arbitration agreement is not in dispute. The parties entered into a Partnership Agreement on 5th May 2011.[1] This is not a partnership at will. It was formed for a single venture, the development of a Slum Rehabilitation Project at Kandivali. The arbitration agreement contain Clause 31 and there is no dispute about this. The Petitioner had a 25% share in the partnership. This is clear from Clause 11. Provisions were also made for the operation of bank accounts and for sale of flats, both being crucial, this being a venture for the real estate development under a SRA Scheme. Clauses 6 and 15 read thus:

> "6. The bankers of the Partnership Firm shall be with the existing Bank with which the parties hereto have been operating their bank account or with any bank or bankers Scheduled and/or Nationalized Bank and financial institutions current and/or saving accounts with such branch or branches and that place or places and shall be operated jointly by one from parties of the First and Second Part and any one from parties of the Third and Fourth Part, necessary instructions shall be given to and the necessary documents shall be furnished to such bankers.

1 Petition, Exhibit "A", *pp.* 33-49.

> 15. As expressly agreed upon that any one from parties of the First and Second Part and any one from parties of the Third and Fourth Part, shall jointly sign and execute all the sale agreements & letter of allotment of premises to be executed with the Intending Purchasers of premises available for free sale in development of the said property for and on behalf of the Partnership firm unless otherwise agreed upon and separately recorded in writing."

3. The Petitioner alleges that Respondents Nos. 1 and 2 either on their own or with the active connivance with Respondent No. 3 have illicitly withdrawn an amount of Rs. 5,93,94,848/- from the partnership funds. The Petitioner also impeaches at least three agreements entered into with in respect of Flats Nos. A/2301, A/2303 and B/2101, saying that all of these are sold at an undervaluation.

4. The prayers sought are more than somewhat ambitious. The first prayer is for deposit of this amount of Rs. 5,93,94,848/-. The second prayer is for security. The third prayer is that the Petitioner be paid an amount of Rs.1,30,95,090/- allegedly standing to the credit of his capital account. Prayer (d) demands the settlement of a loan of Rs. 2,31,15,000/-. There are a large number of other prayers.

5. Mr. Behramkamdin for the Petitioners actually confines himself to prayer clauses (e) and (h), which read thus:

> "(e) That pending the hearing and final disposal of the arbitral proceedings, this Hon'ble Court be pleased to pass a temporary order of injunction restraining the Respondents from dealing with the bank account of the said firm, i.e.,

> A/C No.02272320000990 in the HDFC bank and /or any other account in any other bank, without the joint signature of the Petitioner;
>
> (h) That pending the hearing and final disposal of the arbitral proceedings, this Hon'ble Court be pleased to pass a temporary order of injunction restraining the Respondents from signing and executing any sale agreements, allotment letters of premises and all other sale related documents in respect of any premises forming part of the sale portion in the project being developed by the said firm including the balance sale premises, i.e., flats, shops etc., and as more particularly mentioned in the list hereto annexed and marked as **Exhibit "Q"** without the joint signature of the Petitioner."

He does so on the basis that he has been excluded from the operation of these bank accounts and from the Sale Agreements.

6. It is pointed out from the Affidavit in Reply and its annexures that the Petitioner himself has withdrawn large amounts although his financial involvement was insignificant compared to that of the Respondents.

7. The Petitioner's next allegation that is made is that the flats are sold at an undervaluation. There is nothing at all to support this. What I am shown is a self-serving chart prepared by the Petitioner relating to the three flats that I mentioned earlier and offering to pay more himself for each of these.[2] This chart is unauthenticated and unsigned. It does not say that the Petitioner has a ready third party

2 Petition, *P.* 609.

buyer in an arms' length transaction. There is no evidence of any *bona fide* third party's higher offer.

8. In any case, this document only tells part of the story. Mr Samdani points out that the flats sold till date fall in three categories. He tenders a chart. This is taken on record and marked "X" for identification. There are those sold jointly by both sides; there are those that were sold or allotted by the Petitioner alone; and there are those (only the three I mentioned earlier) that were sold by Respondents Nos. 1 to 3. What is relevant for these is the date of sale and rate per square foot. Seven flats were sold jointly by the parties between March 2016 and October 2016. The rate per square foot ranged from Rs.13,610/- to Rs.14,917/-. The three flats that the Respondents sold were at the rates of Rs. 14,859/- per square foot (for flat A/2301), Rs.14,904/- per square foot (for flat A/2303) and Rs. 16,645/- per square foot (for Flat B/2101). The respective dates are 23rd October 2016, 18th August 2016 and 20th September 2016. It is difficult to accept the submission made by Mr Behramkamdin for the Petitioner because one of the three flats the Petitioner himself allotted, and ignoring for a moment any earlier sales or allotments, viz., flat No. A/1102, the rate per square foot was Rs.14,286/-. The first payment date for this flat is 19th November 2016. This hardly bears out the allegation of a gross undervaluation. Even the earlier allotments of 2010 and 2011, both at Rs. 11,795/- per square foot, do not bear out his contentions that there has been any such gross undervaluation.

9. Prayers (e) and (h) to this Petition travel beyond Clauses 6 and 15 respectively of the agreement. What the Petitioner seeks is that the Respondents must be restrained from either selling flats or operating designating accounts without his personal affirmation and consent. That is not what the clauses contemplate, as Mr Samdani points out. They clearly say that the bank account is to be operated jointly by one of either the first *or* the second party to the agreement i.e., the Petitioner *or* Respondent No.3, along with either the 1st and 2nd Respondent. The same also holds true for clause 15 in regard to sales of flats. What the Petitioner now says is that the 3rd Respondent should be taken out of the contractual clauses altogether and nothing should be allowed to be done without only his affirmative signature though he is only a possible alternate in both clauses 6 and 15. The Petitioner demands his consent be taken. I note that he does not offer his consent.

10. It is impossible in these facts to hold that there is any sort of *prima facie* case made out for the grant of the interim relief.

11. The Petition is dismissed. There will be no order as to costs.

12. Mr Behramkamdin seeks a continuance of the earlier stay dated 19th January 2017. This restrained the Respondents from granted allotment letters in respect of four unsold commercial units. That stay cannot possibly continue. The other stay was in respect of residential units. Even that cannot continue. Apart from anything else, as I have earlier noted, this is a SRA project. I must proceed on the basis that the public authorities monitor progress. There is always a question of clearance of slums and rehabilitation of those entitled in new construction, and only then the sale of flats from the developer's quota. These sales are necessary to fund the remaining work. What the Petitioner seeks is plainly inequitable, viz., that to serve his personal, narrow and unsubstantiated interests, the rights and interests of others, including those entitled to rehabilitation, should be sacrificed — and this is evidently going to be the result if fund flows are constricted or stopped.

13. The application is refused. The previous interim order is vacated.

(G. S. PATEL, J.)