

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1227 OF 2016

IN

ARBITRATION PETITION NO. 597 OF 2016

Yash Mahendra Gala

...Petitioner

Versus

Jigar Vasant Shah & Ors.

...Respondents

And

Nihar Mahendra Gala

...Applicant

WITH

ARBITRATION APPLICATION (L) NO. 865 OF 2016

Yash Mahendra Gala

...Petitioner

Versus

Jigar Vasant Shah & Ors

...Respondents

WITH

CHAMBER SUMMONS NO. 1376 OF 2016

IN

ARBITRATION PETITION NO. 597 OF 2016

Yash Mahendra Gala

...Petitioner

Versus

Jigar Vasant Shah & Ors.

...Respondents

And

Vasant P. Shah (HUF)

...Applicant

Mr.Mahendra Ghelani with Ms.Sneha Vani i/b. Law Charter, for Respondent Nos.1 to 4 & 7 in ARBP no.597/16 and for the Applicant in CHS 1227/16 & 1376/16.

Mr.Vivek Kantawala with Mr.Amey Patil i/b. M/s.Vivek Kantawala & Co., for the Petitioner and for the applicant in ARBAPL no.865/16.

Mr.PM.Shah with Neel Gala & Ms.Meetal Savla, for Respondent Nos.5 and 6.

CORAM : G.S.Kulkarni, J.

DATE : 4th September, 2017

P.C. :

1. In these batch of applications, Arbitration Petition no.597 of 2016 is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') whereby the petitioner Mr.Yash Mahendra Gala has prayed for interim protective measures pending the commencement of arbitration proceedings between the parties.

2. Arbitration application (lodg)no.865 of 2016 has also been filed by Mr.Yash Gala seeking appointment of a sole Arbitrator for resolving the disputes, which have arisen between the parties under the deed of partnership dated 1 April 1992.

3. There are two chamber summons being Chamber Summons Nos.1227 of 2016 and 1376 of 2016 which are filed by one Nihar Mahendra Gala and Mr.Jigar V. Gala, Karta and Manager of Vasant P Shah, HUF respectively. The applicants in these chamber summons seek their intervention in the Section 9 petition (Arbitration Petition No.597 of 2016).

4. This Court by an order dated 1 April 2016 passed in the Section 9 petition (supra) had recorded consensus between the parties that the parties are willing to appoint a sole Arbitrator to decide all the disputes which are subject matter of the partnership firms listed at page Nos. 45 and 46 – 'Exhibit B' to the petition. This Court had accordingly proposed to appoint Mr.Satish Shah, Advocate as arbitrator to decide the disputes that had arisen between the parties and in respect of the firms listed at pages 45 and 46 – Exhibit B to the petition. By a further order dated 11 April 2016 passed by this Court, it was clarified that all the disputes which formed the subject matter of the partnership firms listed at page nos.45 and 46- Exhibit B to the petition, shall be referred to arbitration only if all the parties to the partnership agreements including those who are not parties to the present arbitration petition (arbitration petition No.597 of 2016) agree to do so. It was further observed that if the same was not possible, only the disputes which are the subject matter of the said arbitration petition shall be referred to arbitration. The Court had directed the parties to maintain status quo in respect of the assets of the partnership firm. The order dated 11 April 2016 passed by this Court, continues to operate till date.

5. The principal controversy at today's hearing was the interest of the applicants in the chamber summons, in the dispute which is subject matter of Section 9 petition as also Section 11 application. Mr.Ghelani, learned Counsel for the applicants -interveners in the chamber summons, submitted that these interveners are necessary and proper parties in the adjudication of the disputes between the parties subject matter of the Section 9 petition and under the partnership deed dated 1 April 1992, in regard to which the petitioner – Yash Mahendra Gala, has sought reference of the disputes to arbitration. The contention is on the basis of certain documents and actions which are taken by the partnership firm by which, in the contention of Mr.Ghelani, it can be implied that the applicants become necessary parties to the disputes that have arisen under the partnership deed dated 1 April 1992. This contention on behalf of the intervener has been strongly opposed by Mr.Kantawala, learned Counsel for the petitioner who would submit that the interveners have no locus, inasmuch as they are parties outside the partnership deed dated 1 April 1992. After the submissions as made by the learned Counsel for the parties were heard for some time, Mr.Kantawala, learned Counsel for the petitioner and Mr.Ghelani, learned Senior Counsel for the applicants in the chamber summons as also appearing for some of the

respondents in Section 9 petition, agree that the following order would meet the ends of justice and the respective contentions of the parties can be placed before the arbitrator. Accordingly, by consent of the parties, these proceedings are disposed of by the following order:-

ORDER

(i) Arbitration Petition (Lodg) No.865 of 2016 is disposed of by appointing Mr.Satish Shah, Advocate to arbitrate the dispute between the parties arising under the partnership deed dated 1 April 1992 or any modification if any.

(ii) The disclosure of the learned Arbitrator under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act,1996 may not be necessary as the learned Arbitrator is already seised with the disputes between the parties in respect of the other agreements. The learned Counsel for the parties agree on this.

(iii) The parties consent that the applicants - interveners in Chamber Summons No.1227 of 2016 and Chamber Summons No.1376 of 2016, by consent, are permitted to make an appropriate application before the learned Arbitrator praying that the applicants be joined as parties to the arbitration proceedings. The parties are agreeable that the present chamber summonses and the reply affidavit opposing the chamber summons can be treated as pleadings in the impleadment application of the applicants.

(iv) The contentions of the petitioner and of the other parties to the arbitration proceedings and as to the intervention application of the interveners, on all grounds are expressly kept open to be decided by the learned Arbitrator on its own merits.

(v) The learned Arbitrator shall endeavour to first consider the application of the applicants/intervenors and decide the same as early as possible and within a period of three months from today.

(vi) As regard the prayers of the petitioner as made in the Section 9 petition, the parties agree that the petition alongwith all the pleadings be treated as an application on behalf of the petitioner under Section 17 of the Arbitration and Conciliation Act,1996.

(vii) Ad-interim order passed by this Court dated 11 April 2016 shall continue to operate till the Section 17 application is decided by the learned Arbitrator.

(viii) The learned Arbitrator shall endeavour to dispose of Section 17 application as early as possible and within a period of six months from today.

(ix) Needless to observe that as per the requirement of Section 29A(1) of the Arbitration & Conciliation Act,1996, the learned Arbitrator would be required to dispose of the present proceedings within a period of twelve months.

(x) Initially the parties shall share cost of the arbitration in equal proportion.

All the above proceedings stand disposed of in the above terms. No costs.

[G.S.Kulkarni, J.]