

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1275 OF 2016

Abdul Haque Khalique Khan

... Petitioner

Vs.

Shaikh Tanvir Ahmed & Anr.

... Respondent

Mr. Prathamesh Kamat i/b Mr. Yogendra Kanchan for the Petitioner.

Ms. Ginni Ahuja i/b Shoib Memom for the Respondents

CORAM : S. J. KATHAWALLA, J.

DATE : 2nd FEBRUARY, 2017

1. This Petition is under Section 27 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act, 1996") for seeking assistance of this Court after obtaining necessary directions from the Arbitral Tribunal.

2. The Petitioner is the Original Claimant before the Arbitral Tribunal. The dispute between the Petitioner and Respondent is for dissolution of the Partnership firm constituted under Partnership Deeds dated 26th August 2006 and 22nd February 2008 and for seeking of accounts and other consequential reliefs. The Respondents in the Arbitral proceedings have denied the partnership as well as the Partnership deeds. The Respondents' case before the Arbitral Tribunal is that the Petitioner's role was that of an investor and that there was no partnership between the Petitioner and the Respondents.

3. During the Course of the Arbitration, the Petitioner sought to introduce into evidence two Partnership Deeds dated 26th August 2006 and 22nd February

2008. The introduction of these documents into evidence was objected by the Respondents on the ground that the documents are inadequately stamped. The Petitioner therefore, filed an application under Section 33 of the Maharashtra Stamp Act ("Stamp Act") and a separate application for seeking permission of the Ld. Arbitral Tribunal to approach this Court seeking assistance of the Court under Section 27 of the Arbitration Act, 1996.

4. It is the Petitioner's case that the two Partnership Deeds are critical to their case and its case is primarily based on these two documents as the reliefs sought is for dissolution of the Partnership firm and consequential reliefs.

5. The learned Arbitrator after taking into consideration the arguments of the parties, vide his order dated 4th October 2016 ("said order"), was pleased to allow the application of the Petitioner for seeking assistance of this Court in impounding the documents and forwarding the same to the office of Collector of Stamps and/or any relevant authority for adjudication of the stamp duty and penalty, if any, payable and to direct the concerned / relevant Stamp authority to regularise the two partnership deeds on payment of stamp duty.

6. Relying on the said order of the Arbitral Tribunal, Mr. Kamat, Learned Counsel for the Petitioner submits that the Arbitral Tribunal, being the master of procedure and evidence, upon considering the application of the Petitioner and the opposition of the Respondents has allowed the application of the Petitioner taking into

consideration all relevant facts and that the Respondents have not impugned the said order of the Arbitral Tribunal till date.

7. Mr. Kamat further states that since the Respondents have been unsuccessful in opposing the application under Section 27 of the Arbitration Act, 1996, they cannot indirectly challenge the validity of the order by opposing the present Application. On this proposition, he relies upon a Judgment of a Learned Single Judge of this Court in Montana Developers Private Limited v. Aditya Developers¹, which reads as follows:

"18. In view of section 5 of the Arbitration Act, since the respondents could not have challenged the order passed by the learned arbitrator granting such permission to the petitioner to apply to this Court for the assistance or the order of the learned arbitrator holding that examination of additional witnesses or production of documents was warranted, the respondents cannot be indirectly allowed to challenge the validity of that order while opposing this application under section 27 of the Arbitration Act. In my view, what cannot be done directly, cannot be allowed to be done indirectly. Under section 5 of the Arbitration Act, there is a clear bar for a Court to intervene in any proceedings except the proceedings specifically provided under the provisions of the Arbitration Act. There is no proceeding provided under the Arbitration Act for challenging an order passed by the arbitral tribunal granting permission to a party to seek assistance of a Court under section 27 of the Arbitration Act during the pendency of the arbitral proceedings."

1 2016 SCC OnLine Bom 5318

8. In furtherance of his application for seeking assistance of this Court, Mr. Kamat tenders the originals of the two Partnership Deeds dated 26th August 2006 and 22nd February 2008.

9. The Learned Advocate appearing on behalf of the Respondent has opposed the present Arbitration Petition stating that the Petitioner is not entitled to the reliefs as sought in the present Arbitration Petition.

10. I have heard Learned Advocates for both the parties and perused the pleadings and the order passed by the Arbitral Tribunal dated 4th October 2016. It is an undisputed fact that the Arbitral Tribunal after considering the rival submissions of the parties has allowed the application of the Petitioner and by the said order has expressly accorded his approval to the Petitioner to apply to this Court for assistance in taking evidence. It is trite law that the Arbitral Tribunal is the master of its own procedure. Therefore, there is no reason to reject the reliefs as sought in the present Petition.

11. In any event, as held by this Court in case of *Montana Developers Private Ltd (supra)*, Respondent who cannot challenge the order passed by the Arbitral Tribunal granting permission to Petitioner apply to this Court for seeking assistance, cannot indirectly be permitted to challenge the same by opposing the application under 27 of the Arbitration Act, 1996.

12. For the reasons aforesaid, the Arbitration Petition is allowed in the following terms:

- i. The two Partnership Deeds dated 26th August 2006 and 22nd February 2008 produced in this Court by the Petitioner are impounded;
- ii. The Prothonotary & Senior Master is directed to forward these documents to the Superintendent of Stamps / Collector of Stamps, Mumbai for adjudication;
- iii. The Superintendent of Stamps / Collector of Stamps, Mumbai is directed to adjudicate and pass orders within four weeks of receiving the two Partnership Deeds dated 26th August 2006 and 22nd February 2008 from the office of the Prothonotary & Senior Master of this Court;
- iv. Once the adjudication process is completed, the Superintendent / Collector of Stamps, Mumbai is directed to communicate the order to the Prothonotary & Senior Master of this Court along with a copy of the same to the Advocates of the Petitioner and Respondent;
- v. The Petitioner to pay the amount of stamp duty including penalty, if any, within 3 weeks of receiving a copy of the order. However, the Petitioner shall also be entitled to challenge the adjudication order in accordance with law;
- vi. On the payment of the Stamp Duty, the Parties shall intimate the same to the Arbitral Tribunal who shall resume with the Arbitration as expeditiously as possible;

13. The Arbitration Petition is disposed off in the aforementioned terms.
No order as to costs.

(S.J. KATHAWALLA, J.)