

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.308 OF 2017

Kirtikumar N. Agarwal
through his Constituted Attorney
Named Shri Kunal Kirtikumar AGarwal ... Petitioner
Versus
Kuberchand N. Agarwal
And Others ... Respondents

.....

Mr. S. C. Naidu I/b Ms. Asmita Jaiswal & Mr. Rupesh Jaiswal for the
Petitioner.

Ms. Sonal I/b Mr. Satishkumar Chettiyar for Respondent No.1.

Ms. Aditi Bhat I/b Markand Gandhi & co. for Respondent Nos.2a to 2d.

.....

CORAM : S.C. GUPTE, J.

DATE : 8 OCTOBER 2018

P.C. :

. Heard learned Counsel for the parties.

2 After the Arbitration Petition is heard at some length, learned Counsel for the Petitioners prays for leave to withdraw the arbitration petition, subject to his contentions regarding (i) dissolution of the partnership, which was the subject matter of the reference before the arbitral forum and (ii) determination of his share in the partnership firm, being kept open.

3 The reference in the present case was made by Respondent No.3

(original claimant), who claims to be a partner of the partnership firm of M/s Ellora Guest House along with the Petitioner, Respondent No.1 and Respondent No.2, now represented by his legal heirs, who are arraigned Respondent Nos.2a to 2d. The suit claim was for dissolution of the firm and accounts. At the interim stage, when the matter was before the Appeal Court, the disputes between Respondent No.1 and others were referred to arbitration. In the course of the arbitration reference, Respondent No.1 on one hand and Respondent No.3 (original claimant) on the other entered into consent terms. Under the consent terms, it was agreed by Respondent No.3 that he had no claim against Respondent No.1 towards his purported 25 per cent share. Before the arbitrator, Respondent No.3, in the premises, withdrew his claim and requested the learned arbitrator to terminate the arbitration reference. The termination was objected to by the Petitioner herein (original Respondent No.2) on the ground that he had legitimate interest in obtaining final settlement of the disputes. The learned arbitrator rejected the objection and ordered termination of the reference. The consent terms between the parties, which were tendered before learned arbitrator, were, however, returned by the arbitrator to the parties and were not taken on record. One of the reasons considered by the learned arbitrator for such order was that the original application of the present Petitioner for transposing himself as the claimant in the reference was not pressed by him. The termination of proceedings has been challenged by the Petitioner herein on various grounds. After the matter has been heard at some length, as noted above, the Petitioner seeks withdrawal of the present arbitration petition, keeping all his contentions concerning dissolution of partnership and determination of his share in the partnership open.

4 The consent terms as between Respondent No.3 (original claimant) and Respondent No.1 (original Respondent No.1) is a matter between the two; they may well settle their *inter se* disputes, with which the Petitioner (original Respondent No.2) has nothing to do. His own claim, if any, either for dissolution of the partnership firm or for accounts or determination of his share in the partnership, is not prejudiced in any way. It is for him to adopt such proceedings, as he may choose to. Withdrawal of the present arbitration petition can never come in the way of any such claim made on his behalf. It will of course be open to Respondent No.1 herein to contest any such claim on the ground that the disputes as between the Petitioner and Respondent No.1 and others also stand resolved by the actions of the parties. That will be a matter of merits to be decided by such court or authority as may be approached by the Petitioner for agitating his rights. With these observations, leave may be granted to the Petitioner to withdraw the arbitration petition. Accordingly, the Arbitration Petition is dismissed as withdrawn. All rights and contentions of the parties on merits of the Petitioner's own claims, if any, are kept open.

(S.C. GUPTE, J.)