

psv

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

**NOTICE OF MOTION NO.2095 OF 2018
IN
ARBITRATION PETITION NO.218 OF 2018**

Manoj Kantilal Vyas	..Applicant/org.Respondent
In the matter between	
Mr.Vinod Kantilal Vyas	..Petitioner
Vs.	
Manoj Kantilal Vyas	..Respondent

Mr.Sachin Masurkar for Applicant.
Ms.Ratna Jaiswal for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 17th DECEMBER, 2018

P.C.:

Heard learned Counsel for the applicant and learned Counsel for the respondent.

2. The applicant/the respondent, in above petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, has filed this motion making following prayers:-

“a) That the Order dated 23/03/2018 as modified on 03/05/2018 passed by this Hon'ble Court be modified by maintaining the status quo ante to conduct day to day activities of business at Shree Laxmi Prassanna Hotel and Shree Laxmi Gujrati Thali to be handled jointly by the Petitioner and the Respondent as per its original situation with such further directions as this Hon'ble Court deems appropriate to ensure due compliance of MOU dated

14/11/2015 and Award dated 08/02/2017;

b) In the alternative this Hon'ble Court be pleased to direct the Petitioner to pay the sum of Rs.80,000/- per month to Mr. Bharat K. Vyas and Dinesh K. Vyas i.e. the remaining brothers in terms of Award dated 08/02/2017 and MOU dated 14/11/2015 executed between the Petitioner, the Respondent and said two brothers as interse family arrangement between them, in addition to payment of Rs.1,20,000/- per month as royalty to the Respondent as per order dated 23/03/2018 as modified on dated 03/05/2018.

c) Pending the hearing and final disposal of the above Notice of Motion, the Respondents be directed to give detailed accounts regarding the receipts, payments to the suppliers, etc. in respect of the business conducted in the premises viz. Shree Laxmi Prassanna Hotel, Shree Laxmi Gujarati Thali Andheri (West), Mumbai, from the date of Order dated 23/03/2018 till date of filing of this Notice of Motion;

d) Pending the hearing and final disposal of the above Notice of Motion, the family members i.e. son, daughter and wife of the Petitioners be restrained by an order and injunction of this Hon'ble court from interfering in the business activities and operating the said business by attending the said Hotel in any manner whatsoever in terms of the MOU dated 14/11/2015 and Award dated 08/02/2017."

3. The above petition is already admitted by an order dated 4 January 2018.

4. By an order dated 23 March 2018 passed by this Court in notice of motion (l.) No.2023 of 2017 the Court while disposing of the motion in regard to the conduct of the business made the following directions:-

"4. Since the offer made by the applicant is higher than the offer made by the respondent, the applicant is allowed to conduct the business on payment of an amount of Rs.1,20,000/- as royalty to the respondent and shall incur day to day expenses for running the business separately. The applicant shall maintain the accounts of business during the period when the petitioner is allowed to conduct the business

on payment of royalty. The applicant shall furnish a copy of the said account every quarter to the respondent's advocate. This order is passed without prejudice to the rights and contentions of both the parties.”

5. Thereafter a further order dated 3 May 2018 came to be passed in the following terms:-

“1. It is not in dispute that pursuant to the order dated 23rd March, 2018 passed by this Court, the petitioner has already made payment of royalty amount of Rs.1,20,000/- to the respondent on 2nd May, 2018 by a demand draft. The subsequent payment of royalty of each month shall be paid by the petitioner in compliance with the said order on 5th day of each month.

2. It is made clear that if the petitioner commits any default in making payment of royalty, the respondent would be at liberty to apply for modification of the order dated 23rd March, 2018 passed by this Court.

3. The order dated 23rd March, 2018 stands corrected accordingly. The praecipe is disposed of.”

6. Learned Counsel for the respondent states that her client/original petitioner has no difficulty in forwarding and furnishing copies of the accounts in regard to the said premises namely Shree Laxmi Prassanna Hotel as stated in the prayer clause. She makes a statement that accounts for the three months i.e. April, May and June 2018 are available and the same shall be forwarded to the applicant by tomorrow i.e. 18 December 2018. In regard to the accounts for a period thereafter, the same shall be forwarded to the applicant within two weeks from today. Statement is accepted.

7. Considering the above statement as made on behalf of the respondent, learned Counsel for the applicant fairly submits, that at this stage, the applicant would thus confine the reliefs only in regard to prayer clause (c) as noted above. It is submitted that the applicant after studying and examining the accounts which will be received from the respondent/original petitioner, further reliefs if necessary can be sought.

8. In view of the above approach of the parties, the present notice of motion is disposed of in terms of the statement as made on behalf of the respondent as noted above. Needless to observe that all contentions of the parties on the merits of the matter are expressly kept open. No costs.

[G.S. KULKARNI, J.]