

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPLICATION NO.08 OF 2018

Vijay Keshavrao Dhayde

Applicant

Versus

Satyaprem Jagannath Mehta and others

Respondents

Mr.R.B. Narwade Patil advocate for the applicant (A)

Mr. N.T. Tribhuwan h/f Mr K.S.Shah for respondent No.1

Mr. A.D. Kasliwal advocate for respondent No.2

Mr. M.R.Wagh advocate for respondent Nos.3 and 4.

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CORAM : **RAVINDRA V. GHUGE, JUDGE**

(Date : 6th MARCH, 2019)

PER COURT :-

1 On 22.2.2019, I had passed the following order:-

"1. Learned counsel for the applicant submits that account No. 916020082372509 was opened in the name of the partnership firm 'Regent Pure Veg' on 12.12.2016 and closed on 6.10.2017 at the Bibwewadi Branch of the Axis Bank. It is further stated that respondents 1 and 2, namely, Satyaprem Jagannath Mehta and Samir Ashok Shah, both residents of Aurangabad were the persons operating the said account along with all other partners. Learned Advocates for these two respondents deny the said contention.

2. *It requires no debate that a concerned Bank permits the account to be operated only by those signatories, whose specimen signatures have been obtained along with the identification papers and the copy of the partnership deed in so far as this case is concerned.*

3. *In view of the above, the applicant Vijay Keshavrao Dhayade is permitted to approach the Bibwewadi Bank of the Axis Bank by making an application for seeking information as to who were the persons, who were permitted to operate the above stated account, when it was opened on 12.12.2016, and whether their specimen signatures were obtained by the Bank.*

4. *S.O. to 30.1.2019 for passing further orders.*

5. *In the meanwhile, the petitioner would approach the above stated Bank along with a copy of this order. The Axis Bank is permitted to submit its information in response to the application filed by the applicant Shri Dhayade, in a closed sealed envelope, which would be tendered by the applicant in this Court on the next date.”*

2. *It is made clear that the above stated order was passed as respondent No.2 namely Sameer has taken a stand he is not the signatory to the partnership agreement dated 15/06/2016 and that his signatures are forged on the said partnership agreement and he was never inducted as a partner in the said firm. It was also the contention that a private handwriting expert's opinion indicates that Sameer has not signed on any partnership document. It is clarified by the learned Advocate on behalf of Satyaprem that he*

admits his signature on the partnership agreement.

3. *The Management of the Axis Bank has accepted the request of this Court and has supplied certain documents in a sealed envelope which is opened in the open Court today. The documents include several forms and declarations which the Bank requires for opening of bank accounts. The mode of operation is stated to be as per the partnership letter. The partnership letter dated 23/11/2016 indicates that any 1 amongst the 5 partners can sign for operating the partnership firm account. The documents supplied by the Axis Bank indicate 5 signatures of the 5 partners at every place wherever the partners are required to sign. Satyaprem submits that he is a party to this partnership firm account and he had filled in the necessary form. Sameer has throughout denied that he was party to any act of the partnership firm including the formation of such firm.*

4. *However, the documents supplied by the Axis Bank indicate the details of Sameer, his cell numbers, his pan card and aadhar card numbers and the said form bears his photograph on which he has cross signed and which is verified by the Axis Bank. It is, therefore, obvious that respondent No.2 Sameer has attempted to mislead not only the Lower Court, but even this Court. Copy of his pan card and aadhar card are also on record which indicate his participation in*

the opening of the firm account.

5. *Prima- facie, I find that respondent No.2 Sameer has attempted to mislead this Court in the face of the remark of the Axis Bank that all his original documents were seen and verified and he has self attested these documents. I am, therefore, inclined to issue notice of contempt to respondent No.2 Sameer Ashok Shah.*

6. *At this juncture, learned Advocate for respondent No.2 prays for time to take instructions from Sameer as to whether he would be willing to tender an affidavit apology so as to avoid the initiation of contempt proceedings.*

7. *Considering the above request, stand over to 28/02/2019 for "passing orders".*

8. *The learned Advocates for the litigating sides are permitted to take Photostat copies of the said documents under the permission and supervision of the learned Registrar (Judicial).*

9. *After the learned Advocates for the respective sides have accessed the documents supplied by the Axis Bank, the Court Shirastedar is directed to place the said documents into the same envelope and seal the envelope so as to be preserved by the Nazir Department of this Court."*

2. Today, respondent No.2 Sameer s/o Ashok Shah has sworn an affidavit dated 28/02/2019 which is tendered by the learned Advocate. Same is taken on record and marked as 'X' for identification. It is stated in paragraph Nos. 1, 2 and 3 as under :-

"1. At the very outset I tender my unconditional apology I say that, I have highest regard to this Hon'ble Court and I hold the Court and its orders in high esteem. I am a law abiding citizen. I say that, there is no deliberate and willful act to mislead this Hon'ble Court.

2. I have gone through the orders passed by the Hon'ble Court dated 03.01.2019 and 22.02.2019, contents of the said orders were read over by my Advocate in Hindi and after being made myself conversant with the contents of the same, I am filing the present affidavit apology.

3. I say that the deponent has no intention to mislead this Hon'ble Court and further say that, there is no deliberate and willful act to mislead this Hon'ble Court. I say that the statement made by the Advocate for and on behalf of deponent was on instructions of this deponent due to misunderstanding of the deponent the said statement was made. I further say that, as per the orders of this Hon'ble Court and in view of the submission made by the Advocate of the deponent, I am tendering the

present affidavit apology unconditionally with the folded hands."

3. *Considering the above, I deem it appropriate to refrain from initiating contempt of Court proceedings against respondent No.2. However, in view of the documents and the factors that I have considered, it is apparent that Sameer Ashok Shah was a party to the partnership firm. His signature on the partnership deed coupled with the documents tendered before the Axis Bank for opening a partnership firm bank account would indicate that he was a partner of the said firm. The ground that the partnership firm document is a forged document as he had never signed on the same is, therefore, put to rest and he would be precluded from raising any such ground or that the account opening form of the partnership firm, contains his forged signature.*

4. *The learned Advocate for the petitioner refers to the notice dated 15/03/2018 issued to the respondents suggesting the names of two persons from which, one could be appointed as an arbitrator.*

5. *The learned Advocate Shri Shah and Shri Kasliwal seek time to suggest a name for appointment of an arbitrator on the next date.*

6. *Considering the above, stand over to 06/03/2019 for "passing orders". "*

2 Today, both the sides have suggested the names of some retired Judges of the High Court and some Law Practitioners. When called upon, all the litigating sides agreed for the appointment of Shri Justice P.V. Hardas (former Judge, Bombay High Court) to be the sole Arbitrator.

4 In view of above, Shri Justice P.V. Hardas is appointed as a Sole Arbitrator.

5 The processing charges of the Registry of this Court for an amount of Rs.5,000/-, would be deposited by the petitioner in this Court on or before 18.3.2019.

6 All the litigating sides have agreed to pay equal share of the charges of the learned Arbitrator. Since the litigating sides are five in numbers, each one of them will bear 1/5th charges,

per hearing of the matter or as may be agreed upon by the learned Arbitrator.

7 The litigating sides are at liberty to contact the learned Arbitrator for the settlement of the charges of arbitration and the terms of such payment.

8 This application is, therefore, allowed.

**(RAVINDRA V. GHUGE),
JUDGE**

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