

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4923 OF 2017

Dorab Bakhtyar Panday

...Petitioner

vs.

Gita Rusi Choksi and Ors.

...Respondents

Mr. Vivek Kantawalw a/w. Mr. Amey Patil, Mr. Vivek Sharma, Mr. Shanay Bafna and Ms. Hetal Jobanputra i/b.M/s. Vivek Kantawala & Co., for the Petitioner

Mr. A.Dasgupta I/b. Jhangiani Narwa & Associates, for Respondent Nos. 1 to 7.

Ms. Priya Rombade a/w. Mr. Aniket Worlikar I/b. Devan Dwarkadas & Partners, for Respondent No. 8.

CORAM : M. S. SONAK, J.

DATE : MARCH 25, 2019

ORAL JUDGMENT

. Heard Mr. Vivek Kantawala, learned counsel for the Petitioner and Mr. Dasgupta, learned counsel for the Respondent.

2. Rule. Rule made returnable forthwith with consent and request of learned counsel for the parties.

3. The challenge in this Petition is to the order dated 5th April, 2017 by which the learned trial Judge has allowed the application at Exhibit 22 taken out by Respondent No. 2 herein under section

8 of the Arbitration and Conciliation Act, 1996 (said Act) and referred the parties to arbitration.

4. The record indicate that there is no arbitration agreement between the parties though the Petitioner and Respondent Nos. 1 to 7 are family members. The Respondent No. 8 is a third party and there is no question of any agreement for reference of dispute the arbitration between the third party and owner. Based upon certain expectations indicated in the Will dated 26th April, 1979, it cannot be said that there is agreement between the parties to refer their dispute to arbitration. In the absence of an arbitration agreement between the parties, the learned trial Judge was not justified in allowing the application (Exhibit 22) under Section 8 of the said Act and referring the parties to arbitration.

5. On the aforesaid short ground, the impugned order is set aside and the application (Exhibit 22) taken out by Respondent No. 2 herein is dismissed.

6. The parties to now appear before the appropriate trial Court on 8th April, 2019 at 11.00 am.

7. The interim arrangement indicated in the order dated 24th April, 2017 to continue till the said date. Thereafter it is for the parties to seek appropriate interim relief from the learned trial Court.

8. It is made clear that this Court has not gone into merits of the matter and therefore all contentions of all the parties are left open for determination by the appropriate trial Court.

9. Rule is made absolute in the aforesaid terms.

10. There shall be no order as to costs.

11. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)