

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**ARBITRATION APPEAL NO. 13 OF 2017
WITH
CIVIL APPLICATION NO. 14 OF 2017
IN
ARBITRATION APPEAL NO. 13 OF 2017**

Kruti Infrastructure, through
partners Sagar S. Chankeshwara & Anr.

... Appellants/Applicants

V/s.

Ranjit Kantilal Shah & Anr.

... Respondents

Mr. G.S. Godbole a/w. Ms. Ketki Gadkani i/b. Parag M. Tilak for the
appellants/applicants.

Mr. Sachin S. Punde for respondent nos. 1 and 2.

CORAM : G.S.KULKARNI, J.

DATE : 28th August, 2019

P.C.:

Heard Mr. Godbole, learned counsel for the appellants and learned
counsel for respondent nos. 1 and 2.

2. This is a 2017 Appeal filed under section 37 of the Arbitration and
Conciliation Act whereby the appellant has challenged the order dated 6th
March, 2017 passed by the learned Principal District Judge, Solapur in Civil
Miscellaneous Application No. 286 of 2016 whereby Section 9 Application
filed by the appellants came to be rejected.

3. This Appeal was listed before the Court on several occasions. On 30th

June, 2017 in an endeavour that the disputes between the parties are resolved, the Court passed the following order:

“1. Heard Mr. Anturkar, learned Senior Counsel for appellants and Mr. Punde, learned Counsel for respondents at length.

2. By this Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Act'), appellants have challenged the judgment and order dated 06.03.2017 passed by the Principal District Judge, Solapur in Civil Miscellaneous Application No.286 of 2016. By that order, the learned Principal District Judge rejected the application made by the appellants under Section 9 of the Act inter alia praying for-

(a) appointing Court Commissioner in respect of partnership business of Kruti Infrastructure; and

(b) temporary injunction restraining the respondents from developing and creating third party interest in respect of Survey No.105 and 106 situate at Degaon, Dongaon Road, Solapur of Shri Sadanand Gaikwad till such time the respondents give signing authority to the remaining partners of the partnership firm as also respondents signing 'E' Form and new Partnership Deed.

3. The matter was heard at length from time to time and was heard today also. Mr. Punde states that respondent No.1 is present in the Court. Respondent No.1 is husband of respondent No.2. Upon taking instructions from him, he states that respondents accept that they stood retired from the partnership business of Kruti Infrastructure with effect from 01.04.2016 and that they will not claim any share in the immovable properties of the partnership firm. They are entitled to share of 11.11% and 11.12% respectively. Learned Counsel appearing for the parties, therefore, jointly submit that Government approved Valuer on the panel of this Court may be appointed for carrying out valuation of the following properties and submit report to this Court:

“A] Akshat Palms Township Project being undertaken on plot No.400, New Survey No.29/1, Salgarwadi, Taluka North Solapur, District Solapur situate within the limits of Solapur Municipal Corporation having following description:

1. Plot Nos.2 to 28, 37 to 39, 42, 45 to 50, 54 to 63, 66 to 70, 78 to 87, 97 to 99, 101, 103, 110 to 134, 144, 145, 148, 174, 184, 201, 208, 233, 234, 237, 240, 242, 250, 274, 275, 280, 283, 300, 305, 371, 385, 403 to 409, 418 and 419;
2. Shopping Area Amenity Plot No.36, 410 and 1(part);
3. Row Houses under construction on Plot No.71, 94 and 100;
4. Flats in Building 'C' bearing Nos.102, 107, 202, 207, 302, 303, 307, 402, 403, 406, 502, 503, 506, 508, 601, 602, 605, 608, 701 to 708;

5. Shops in Building 'C' bearing Nos.27 to 36;
6. Partly constructed Building 'A' on Plot No.1.

B] Akshat Greens Layout Project being undertaken on Gat No.101/3, Degaon, Degaon-Kavthe Road, Taluka North Solapur, District Solapur situate within the limits of Solapur Municipal Corporation having following description:

1. Open plot Nos.1 to 24, 32 to 63, 67 to 70, 77 to 102,104 to 119, 123 to 125, 129, 131 to 139, 141 to 151;
2. Shopping Area Amenity Plot No.152.”

4. Learned Counsel for the parties agree that parties will deposit Rs.1 lakh each in this Court within two weeks from today.

5. In view thereof, by consent of the parties, Mr. Avinash V. Pendse having address at 7, Tukaram Niketan, Bhagat Lane, Mahim, Mumbai 400 016 is appointed as a Valuer. Learned Counsel for the parties assure that they will serve authenticated copy of this order on the Valuer so appointed. List the Appeal for further directions on 20.07.2017, High on Board. The Valuer is requested to attend the proceedings on that date.”

3. Thereafter on 9th August, 2017 the Court passed the following order:

“1. By the earlier orders passed in the present proceedings, Mr. Avinash V. Pendse was appointed as a valuer for carrying out valuation of the properties. Learned Counsel for the parties state that Mr. Avinash V. Pendse by his letter dated 6 August 2017 has given details of his fees amounting to Rs.4,70,820/- as total fees. An amount of Rs.2,00,000/ (in the equal proportion) is deposited in this Court by the parties, to be paid to Mr. Avinash V. Pendse.

2. Learned Counsel for the parties submits that the balance amount shall be deposited in equal proportion within a period of two weeks from today. Learned Counsel for the parties agree that they would directly pay the balance amount to Mr. Avinash V. Pendse and take an acknowledgment of the receipt of the same. The amount already deposited in this Court is permitted to be withdrawn by the valuer.

3. In the meantime, the anxiety is that Mr. Avinash V. Pendse shall commence the work of valuation of the properties and place a report of the same on record of this appeal. Accordingly, Mr. Avinash V. Pendse, the Valuer shall submit report of the valuation of the properties on the record of this appeal within a period of three weeks from today.

4. Accordingly, stand over to 6 September 2017.”

4. Today Mr. Godbole, learned counsel for the appellants has submitted that the valuation which is made by the learned valuer is on an extremely higher side and it is not agreeable to his clients to resolve the disputes on the basis of said valuation, that is, to make any payment by the appellant to the respondent on the basis of the said valuation.

5. Be that as it may, on the above conspectus, the proceedings are pending since 2017. These are interim proceedings arising on an application filed under section 9 of the Act. Admittedly the business of the partnership firm is also at a stand still. In these circumstances, it will be appropriate for the parties to commence arbitral proceedings and if possible make an endeavour to arrive at an amicable settlement. This Court cannot convert these proceedings either into a mini trial or a mini arbitration. Thus, there is no useful purpose to keep this Appeal pending, any further. It is accordingly disposed of keeping all contentions of the parties open to be agitated in appropriate proceedings.

5A. This Court in its order dated 20 July 2017 passed on this appeal, in paragraph (4) of the order had recorded a statement as made by the learned Counsel for the appellants as an undertaking to the Court, that until further orders in this Appeal, the appellants will not dispose of the properties mentioned in paragraph-3 of the order dated 30.6.2017. This statement continues to operate till date. In the facts and circumstances of the case, the parties are directed to commence the arbitral proceedings within thirty days from today. It will be also permissible for the parties to move appropriate application under Section 17 of the Arbitration and Conciliation Act, 1996 before the arbitral tribunal, seeking such interim measures. The interim order dated 20 July 2017 passed by this Court in

terms of the said statement as made on behalf of the appellants, shall continue to operate till the decision by the arbitral tribunal on Section 17 application. In case the arbitral proceedings are not commenced by any of the parties within thirty days from today, this protection shall cease to have any effect. All the contentions of the parties are expressly kept open.”

6. As it is a partnership dispute, liberty to the parties to file appropriate interim proceedings before the arbitral tribunal. All contentions in that regard are expressly kept open.

7. Appeal is disposed of on the aforesaid terms. No costs.

8. Civil Application would not survive and it is accordingly disposed of.

(G.S.KULKARNI, J.)