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

ARBITRATION APPLICATION NO. 60 OF 2015

Sitaram Mahadev Ambekar and ors ... Applicants.

V/s.

Atmaram L. Sawardekar ... Respondents

- Mr. Shiraz Rustomjee, Senior Advocate a/w Ms. Shreya Parikh and Mr. Nitesh V. Bhutekar, for the Petitioner.
- Mr. Uday P. Bobade I/by A. Z. Mookhtiar, for respondent

CORAM : G. S. KULKARNI, J.

DATE : 26th FEBRUARY, 2019.

P.C. :

1] Heard Mr. Rustomjee, learned Senior Counsel for the petitioner and Mr. Bobade, learned counsel for respondents.

2] This application filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short, “ACA Act”), is pending since 2015. It was listed before this court on number of occasions. There was also a mediation between the parties and some consensus between the parties on certain issues which was recorded by this Court, in the order dated 12rd September, 2018, which reads thus:-

“1. The parties have agreed to have the properties/assets as mentioned in the Schedule to the Minutes dated 23rd April, 2014 valued by Mr. Amol Shetgiri of M/s Shetgiri and Associates. The fees of the valuer shall be borne by the parties equally.

2. The learned Advocate for the Defendant Nos. 1 to 4, 10, 12, 14 and 15 states on instructions that his clients have agreed to the 60/40 division as provided in the Minutes dated 23-04-2014, subject to the other parties consenting that the Defendants may carry on their business of body building and trailer manufacturing independently. The parties agree that the 60/40 division will not apply to the properties in which defendant No.5 has a share in the items mentioned in paragraph 4 and 5 of the Minutes dated 23-04-2014”.

3] Thereafter this application was heard on 22.1.2019 when the following order was passed.

“Considering the order dated 12 September 2018 passed by this Court (S. J. Kathawalla, J.), it is observed that the parties have arrived at a consensus in regard to the properties/assets as mentioned in the Schedule to the minutes dated 23 April 2014, which was also valued by Mr. Amol Shetgiri of M/s Shetgiri & Associates. The parties have also agreed to a 60/40 division as recorded in the said Minutes dated 23 April 2014. It is agreed between the parties that 60/40 ratio would not be applicable to Nerul property.

2. Learned counsel for the parties submit that an attempt is being made to dispose of the property at Nerul, which would substantially work out the consensus as arrived between the parties and recorded in the order dated 12 September 2018.

3. In my opinion, the disputes between the parties are already resolved as recorded in the order dated 12 September 2018 and the further adjudication of this application may not be required. However, considering the persuasive submissions of Mr. Bobade and Mr. Bhutekar, who state that this application be kept pending for some time in the interest of their respective clients, ;hearing of this application is finally adjourned for four weeks”.

4] It may be observed that the parties are desirous of resolving the disputes as clearly recorded in the order 12.9.2018. Responders No.1 to 4, 10, 12, 14 and 15 who are also parties in suit No.40 of 2015, agreed to a 60:40 division as provided in the minutes dated 23.04.2014, subject to the

other parties consenting that the defendant may carry out the business of body building and trailer manufacturing independently and that said 60:40 ratio will not apply to the properties in which Defendant No.5 has a share in the items mentioned in paragraph Nos 4 and 5 of the order 23 February 2014.

5] The consensus between the parties can be noted from the order dated 22.01.2019, passed by this Court, for selling of the property at Nerul and the consensus of 60:40 ratio also to be applicable to the said property. Mr. Bobade, learned counsel for respondents, on instructions, submits that his clients are agreeable for sale of the property for an amount of Rs.25 crores or for higher amount and that all these issues in respect of sale of property can independently be agitated between the parties in the pending suit.

6] In the aforesaid circumstances, learned counsel for the petitioner seeks leave to withdraw this application. It is accordingly disposed of with liberty to the parties to file necessary application as and when need so arise.

[G. S. KULKARNI, J]