

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.479 OF 2017**

Dinesh Chandrakant Mirani	..Petitioner
Vs.	
Hemlata Chandrakant Mirani & Ors.	..Respondents

Ms.Swati Sagvekar for Petitioner.
Ms.Sapna Krishnappa for Respondent No.1.
Mr.Prashant Jadhav for Respondent No.3.

CORAM : G.S. KULKARNI, J.

DATE : 21st JANUARY, 2019

P.C.:

Heard learned Counsel for the petitioner and learned Counsel for the respondents.

2. This petition under section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the ACA") is filed praying for the following reliefs:-

“(a) That pending the arbitral proceedings and the making of the award and the implementation thereof, this Hon'ble Court be please to remove the Respondent no.4 and 1 as an administrator of the suit properties so appointed vide consent terms dated 16th January, 2014 and appoint some appropriate person as an administrator in place of Respondent no.4 and 1;

(b) That pending the arbitral proceedings and the making of the award and the implementation thereof, this Hon'ble Court be please to direct the Respondent No.4 and 1 to transfer the aforesaid amount of Rs.48,35,000/- being the principal amount along with corresponding interest of the share of the amount received from the Sadguru Developer along with additional interest thereon @ 21% per annum till

the realisation thereof.”

3. It is not in dispute that the learned sole arbitrator has already entered a reference in the year 2016. In an earlier petition filed by the petitioner under Section 9 of the ACA [Arbitration Petition (Lodging) No.2245 of 2013], this Court (N.M. Jamdar, J.) by an order dated 16 January 2014 disposed of the said petition in terms of the Consent Terms entered between the parties. The following order was passed:-

“1 Heard the learned counsel for the parties.

2 The learned counsel for the parties state that the parties have arrived at an amicable settlement and executed the consent terms. They pray that the consent terms be taken on record and the petition be disposed of in terms of the said consent terms.

3 The learned counsel for the Respondents have not filed their Vakalatnama. They undertake to file the same within three days from today. The Consent Terms are taken on record and marked “X” for identification, subject to filing of the Vakalatnamas.

4 The learned counsel for the parties state that the Petitioner and the Respondent Nos. 2 to 5 are present in the court and that the Respondent Nos. 1 and 6 are dropped from the Consent Terms. This deletion of Respondent Nos. 1 and 6 will be at the risk and cost of the parties.

5 The Arbitration Petition is disposed of in terms of the Consent Terms, marked “X”.

4. Thereafter it appears that the petitioner had moved an application under Section 17 of the ACA before the arbitral tribunal. The learned sole arbitrator in the said application passed an order dated 16 January 2014 inter-alia making the following observations and considering that earlier a consent order was passed by this Court:-

“6. In view of the aforesaid findings I conclude that DCM

has made out a case for removal of DhCM and HCM as the Administrators. However, the question is whether as an Arbitrator should I make an order in the present application for modifying the consent terms which were subject matter of a petition under section 9 of the Arbitration and Conciliation Act, 1996 and which are filed in Court. Through learned advocate for DCM contended that the amended Act gives similar power to the Arbitral Tribunal as are given to the Court under section 9 of the Act. I feel it would not be proper on my part to vary or modify an order which is passed by Court. The second application under section 9 was referred to the Arbitral Tribunal by Court while appointing me as the Arbitrator. However, that application has been disposed off. But propriety demands that I should not vary / modify the order passed by the Hon'ble Court. So I am disposing off prayers (a) and (b) of the present application with above observations leaving it open to the parties to seek appropriate reliefs from the Hon'ble Court under Section 9 of the Act.”

5. Learned Counsel for the petitioner states that accordingly present petition has been filed. Learned Counsel for the parties have also contended that there are settlement talks between the parties which are in progress.

6. Considering the clear provisions of Sub-section (3) of Section 9 read with Section 17 of the ACA, it may be observed that though this Court had passed an order dated 16 January 2014 in terms of the Consent Terms, however, it would be within the jurisdiction and powers of the arbitral tribunal to pass such further and appropriate orders on any application under Section 17 which would be moved by the parties. It is clarified that the petitioner or any other party to the arbitration proceedings would be at liberty to pursue such application including an

application for modification of the consensual arrangement as agreed between the parties in the Consent Terms dated 16 January 2014.

7. It needs to be observed that the consensual arrangement as arrived in the consent terms was an arrangement prior to the constitution of the arbitral tribunal. Thus it would be open for the parties to move an appropriate application before the arbitral tribunal for variation of the consensual arrangement and/or to seek such further and other orders which the parties may feel appropriate.

8. With above clarification and in the facts and circumstances of the case, adjudication of Section 9 petition is not called for.

9. Needless to observe that all contentions of the parties on merits of the disputes and merits of any such interim application already filed or to be filed before the arbitral tribunal are expressly kept open.

10. This petition is accordingly disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]