

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 227 OF 2014**

Sunderlal Aklinglal Jain	...Petitioner
<i>Versus</i>	
Yogendra Pitamberdas Doshi & Ors	...Respondents

Mr AR Shaikh, i/b ARS Legal, for the Petitioner.
Mr Ramesh Ramamurthy, with Mr Saikumar Ramamurthy & Ms
Jayasree Pillai, for Respondents Nos. 1 to 4.

CORAM: G.S. PATEL, J.
DATED: 12th December 2019

PC:-

1. In this Arbitration Application, Mr Justice HL Gokhale, former Judge of the Supreme Court of India, was appointed as the sole arbitrator by an order of 17th July 2014, later clarified by two orders of 4th and 12th August 2014. There were two Arbitration Applications (L) Nos. 620 of 2014 and 622 of 2014. There were also two Arbitration Petitions (L) Nos. 621 of 2014 and 623 of 2014. Those were to be heard as section 17 applications by the learned sole Arbitrator.

2. Mr Justice Gokhale made an interim order on 11th July 2015. There were several efforts to bring the parties to a settlement but that did not succeed. The arbitration also did not progress.

3. By his letter of 22nd November 2019 Mr Justice Gokhale has now clearly indicated that he no longer desires to retain the matters and therefore withdraws from the arbitration. This is a termination of the arbitral mandate within the meaning of Section 14(1)(b) of the Arbitration & Conciliation Act, 1996. The matter was placed before me because of this communication from the learned sole arbitrator.

4. The Claimants seems to have changed advocates repeatedly and have in fact engaged one set of advocates, released them from engagement, engaged them yet again and so on and so forth. Every new set of advocates, and every set of advocates re-engaged makes the same claim, that there are no instructions.

5. In view of what Mr Ramamurthy for the Respondents now points out, I am not at the least surprised as this lack of instructions.

6. He says that between the parties, i.e. Sunderlal Jain and Payal Doshi/ Payal Dinesh Shah who are the legal heirs of the original partners, there were in fact criminal proceedings. The present Respondent was required to deposit an amount of Rs 2,31,63,877/- in this Court. These criminal proceedings ultimately came before this Court in Criminal Writ Petition No. 696 of 2019 which was very recently on 22nd November 2019 listed before Mrs Revati Mohite Dere J. On that date, she made the following order:

“1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Respondents waive service through their respective

counsel.

3. Learned counsel for the petitioner and respondent No. 2 state that the parties have amicably resolved their dispute. The learned counsel for the respondent No. 2 has tendered an affidavit of the respondent No. 2. The same is taken on record and marked 'X' for identification. It appears that the petitioner has deposited the cheque amount of Rs. 2,31,63,877/- in this Court vide Demand Draft bearing No. 080486 dated 1st October 2019 drawn on HDFC Bank, Mumbai.

4. Learned counsel for the respondent No. 2 has no objection if the said proceedings i.e. CC No. 4300168/SS/2016 pending on the file of the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, are quashed and set-side in view of the amicable settlement between the parties.

5. Learned counsel for the respondent No. 2 states that the parties have settled the dispute and that this Court be pleased to direct the Registry to hand over the amount of Rs. 2,31,63,877/- deposited in this Court, to the respondent No. 2, in view of the settlement. Learned counsel for the petitioner states that the petitioner has no objection if the said amount which is deposited in the Registry, is handed over to the respondent No. 2.

6. In view of the aforesaid, the following order is passed:

ORDER

(i) Petition is allowed. Accordingly, CC No. 4300168/SS/2016 pending on the file of the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, is quashed and set-aside;

(ii) The Registry to hand over Rs. 2,31,63,877/- deposited by the petitioner in this Court along with accrued interest, if any, to the respondent No. 2, on the respondent No. 2 furnishing proof of his identity;

(iii) Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

7. All concerned to act on the authenticated copy of this order.”

7. Mr Ramamurthy therefore says that the Claimants have withdrawn the entire amount deposited. There is simply nothing left to take to arbitration and paragraph 4 makes it clear that the quashing of the criminal proceedings commonly agreed was in view of the overall amicable settlement of all disputes. It is also in view of this overall settlement that the present Claimant was permitted to withdraw the amount of Rs 2,31,63,877/-.

8. If the Claimant maintains that there is still a dispute that remains unresolved and is to be taken to arbitration, he needs to file an appropriate application or petition with a complete explanation. The arbitral mandate having ended, no order can be passed in the 2014 arbitration applications at all. The Claimant will need to explain the survival of any claims beyond the withdrawal and beyond the statements noted by Mrs Mohite Dere J. None of this is possible across the bar on oral statements made without instructions. Even an affidavit will not suffice. What is required is a substantive proceeding of its own and the claimant is at liberty to file it. It will be decided on merits as and when (and if) it ever comes to be made.

This is not to be understood as an encouragement by the Court to file such a proceeding.

9. No further orders are necessary at this stage except to note that the arbitral mandate has terminated.

(G. S. PATEL, J)