

Vidya Amin

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

**ARBITRATION APPLICATION (L) NO. 296 OF 2019
WITH
ARBITRATION PETITION (L) NO. 388 OF 2019**

Pankaj Chunilal Shah	... Applicant
V/s.	
Sunil Ramchandra Kadam & Ors.	... Respondents

**WITH
ARBITRATION PETITION NO. 752 OF 2019**

Faithful Developers & Ors.	... Petitioner
V/s.	
Pankaj Chunilal Shah & Ors.	... Respondents

**WITH
NOTICE OF MOTION (L) NO. 1756 OF 2019
IN
ARBITRATION PETITION (L) NO. 388 OF 2019
(Not on board. Taken on board)**

Pankaj Chunilal Shah	... Applicant
in the matter between	
Faithful Developers & Ors.	... Petitioner
V/s.	
Pankaj Chunilal Shah & Ors.	... Respondents

Mr. Owen Menezes a/w. Ravi Gadagkar, Aniket Ransubhe and Ms. Suvarna Ambre i/b. Ajay Basutkar for the applicant and for the petitioner in ARBPL/388/2019 and respondent no. 1 in ARBP/752/2019.

Mr. Prasad Road for respondent nos. 1 to 4.

Dr. Birendra Saraf a/w. Ms. Apurva Thipsay, Asha Nair and Zatul i/b. Diamondwala & Co. for respondent nos. 5 to 9.

**CORAM : G.S.KULKARNI, J.
DATE : 22nd July, 2019**

P.C.:

Heard learned counsel for the parties.

2. These are three proceedings. Arbitration Application (L) No. 296 of 2019 is filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences which are stated to have arisen between the parties under the Partnership Firm Agreement dated 15th February, 2016.

3. Earlier to the filing of Section 11 Application, the petitioner filed Arbitration Petition (L) No. 388 of 2019 under section 9 of the Act praying for interim reliefs pending the arbitral proceedings. On this petition, the Court after hearing the parties on 10th April, 2019 passed the following order:

1. Dr.Saraf, learned Counsel for the respondents on instructions agrees that his clients will hand over the requirements as set out in prayer (a)(i) to the officer of the Court as appointed by the Court.

2. The petitioner has made specific averments in paragraphs 31, 32 and 33 of the petition whereby the petitioner is seeking ex-parte relief in terms of prayer clause (a)(i) and accordingly has moved this petition. Dr.Saraf, learned Counsel for the respondents would submit that having noted the matter on the cause list, he is appearing and there is no formal notice to the respondents. Dr.Saraf states that his client is not averse to give the details as prayed by the petitioner.

3. Accordingly, the Court Receiver, High Court, Bombay shall forthwith during the course of the day, visit the premises being B-1301, 13th floor, Tower B, Peninsula Business Park, Senapati Bapat Marg,

Lower Parel (West), Mumbai and take copies of all relevant details of which are set out in prayer clause (a)(i) of the petition.

4. The Court Receiver is permitted to take assistance of Computer Expert or technical assistance provided by the petitioner, to receive the said details. Once the details are received, the same shall be kept in the safe custody of the Court Receiver and shall be subject to further orders which shall be passed by this Court in the present petition.

5. Needless to observe that all this is without prejudice to the rights and contentions of the respective parties.

6. Dr.Saraf would also submit that none of the allegations made in the petition, are accepted by the respondents and that the respondents be permitted to assert their case in opposing the reliefs when the application is taken up for hearing.

7. As this Court has passed the above ad-interim order only in the interest of justice keeping in view the mitigating circumstances and considering the averments as specifically made in paragraphs 31, 32 and 33 of the petition, certainly it will be open to the respondent to raise all their contentions in opposing the petition. The present order in no manner accepts any of the allegations against the respondents or the case of the petitioner.

8. The Court Receiver to visit the premises before 3.30 p.m. today alongwith the copy of this order.

9. As regards Dr.Saraf's contention that the petitioner ought not to prohibit the partnership firm making the day to day expenditure, the learned Counsel for the petitioner would submit that his client has no objection for the respondents to make the statutory payments and if any other payments than statutory payments are to be made, the respondents are free to take prior consent of the petitioner before making such payments. This arrangement is accepted.

10. The Court Receiver shall take documents and the other details as set out in prayer clause (a)(i) only in relation to the business of the partnership of respondent no.9-M/s.Faithfull Developers, and no other business.

11. The learned Advocates for the parties are permitted to accompany the Court Receiver.

12. All parties including the Court Receiver and the bank to act on the authenticate copy of this order.

Stand over for two weeks.”

4. Thereafter the respondents have filed reply affidavits. Also rejoinder affidavit is placed on record.

5. It is not in dispute that pursuant to the order dated 10th April, 2019 (*supra*), the Court Receiver, High Court, Bombay has taken necessary steps and the copies of all the relevant documents are taken from the office of respondent nos. 5 to 9.

6. Learned counsel for the petitioner submits that his client is interested to have the documents pertaining only to the firm M/s. Faithful Developers. In case there are documents pertaining to other business/firms of the respondents, his client is not interested in such documents.

7. There is likelihood that other documents are also included in the documents obtained by the Court Receiver, it would be appropriate that an exercise be undertaken by the Court Receiver to separate those documents which are not pertaining to the partnership firm M/s. Faithful Developers. This exercise can be done by the Court Receiver on a date mutually fixed. The representatives of the parties are permitted to remain present when such exercise would be done and if necessary also their advocates.

8. There is another Arbitration Petition No. 752 of 2019 filed by M/s. Faithful Developers praying for interim reliefs pending the arbitral proceedings. On 3rd June, 2019 this Court has passed following order on the said Petition:

“1. Mr.Menezes for respondent no.1 seeks time to file reply.

2. Considering the order passed by this Court dated 10 April 2019 and more particularly the observations as made in paragraph 9 of the order, it is clear that the Court had permitted payments other than the statutory payments to be made, however, prior thereto the petitioners (respondents therein) taking prior permission of respondent no.1 before making such payments. This was the accepted arrangement.

3. Today the petitioners' concern is that salaries of the employees are outstanding and payable, as also there are creditors who are required to be paid. On behalf of the petitioner, it is contended that even the payment of salaries is being objected by respondent no.1 referring to the said order passed by this Court. Mr.Menezes, learned Counsel for respondent no.1 would contend that what is being demanded by the petitioners would amount to making bogus payments and therefore, his client has serious objections.

4. Be that as it may, the parties would be required to be heard after reply affidavit is filed on behalf of the respondents. However, in the meantime, it is open to the petitioners to point out to respondent no.1 as directed in paragraph (9) of the earlier order dated 10 April 2019 passed in Arbitration Petition (Lodg) no.388 of 2019, in regard to the details of the salaries to be paid to the employees who are genuinely employed by the petitioners, and the payments to made to the genuine and bonafide creditors, which can be on the basis of the data which is stated to be to the knowledge of both the parties. If respondent no.1 is of the opinion that these claims are genuine and bonafide, respondent no.1 shall grant its consent for such payment. This exercise be undertaken within one week from today. Parties shall co-operate with each other with regard to this arrangement. On all the other issues, the parties would be heard on the adjourned date of hearing. All contentions of the parties are kept open.

5. Accordingly, stand over to 24 June 2019.

6. Reply affidavit be filed within two weeks from today. Rejoinder if any be filed within one week thereafter.

7. Arbitration Petition (I) no.388 of 2019 be shown alongwith this matter.

8. Mr.Menezes, learned Advocate for Respondent no.1 (petitioner in Arbitration Petition (L) no.388/19) is permitted to file rejoinder in the Arbitration Petition (L) no.388/19.

9. In the meantime Dr.Saraf, learned Counsel for the petitioner and Mr.Menezes, learned Counsel for respondent no.1 has agreed that their clients shall make an endeavour to resolve the disputes at least in these proceedings with the assistance of the learned Advocates.

10. Parties to act on the authenticated copy of this order.”

9. Thereafter this petition was adjourned, to enable the learned counsel for the parties to complete the pleadings. All these Petitions are tagged together and listed for hearing today.

10. After these proceedings are heard for sometime, learned counsel for the parties are agreeable that the disputes and differences between the parties be referred for adjudication by appointing a sole arbitrator. It is also agreed between the parties that Section 9 Petitions be permitted to be converted as Application under section 17 of the Act to be adjudicated by the arbitral tribunal.

11. In view of the consensus between the parties, it is in the interest of justice that the present proceedings are disposed of by the following order:

ORDER

- (i) Mr. Justice Jainarayan Patel, Former Chief Justice of the Calcutta High Court is appointed as a prospective sole arbitrator to adjudicate the disputes between the parties under the Partnership Agreement dated 15th February, 2016.
- (ii) The learned prospective sole arbitrator, ten days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;
- (iii) Both the Petitions filed under 9 of the Act are permitted to be converted into Application under section 17 along with pleadings filed thereon to be adjudicated by the arbitral tribunal;
- (iv) The fees payable to the arbitral tribunal shall be the fees as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (v) At the first instance, the parties shall appear before the prospective arbitrator within ten days from today on a date

which may be mutually fixed by the prospective sole arbitrator;

- (vi) The learned sole arbitrator shall endeavour to decide Section 17 Application as expeditiously as possible and within a period of ten weeks from the date of the said application so filed before the arbitral tribunal;
- (vii) All contentions of the parties including on merits of the disputes are expressly kept open;
- (viii) The Court receiver shall undertake the exercise of separating the documents as noted above and furnish copies of the documents/CD's as collected, to both the parties and the originals and the CDs etc. shall be returned to respondent nos. 5 to 9 M/s. Faithful Developers.
- (ix) After the copies of the documents are handed over to the petitioners and originals are handed over to respondent nos. 5 to 9, the Court Receiver shall stand discharged, however, this can be subject to payment of fees of the Court Receiver which be informed to the petitioner and which shall be paid within two weeks of being informed.
- (x) Liberty to the parties to file further pleadings, if necessary, before the arbitral tribunal;

- (xi) Affidavits tendered today are taken on record and shall be treated as part of the proceedings before the arbitral tribunal;
- (xii) All the proceedings are disposed of in the above terms. No costs.
- (xiii) Notice of Motion would also not survive and it is also disposed of;
- (xiv) Office to forward a copy of this order to the learned Arbitrator on the following address:

Chamber 234, 2nd floor,
DBS Business Centre, Raheja Chambers,
Free Press Journal,
Nariman Point, Mumbai – 400 021

(G.S.KULKARNI, J.)