

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 838 OF 2019**

Ila Bharat Thakkar	...Petitioner
<i>Versus</i>	
The Saraswat Cooperative Bank Ltd & Ors	...Respondents

Mr S Shamim, *i/b Shamim & Co., for the Petitioner.*
Mr Harshad A Sathe, *for Respondent No. 1.*
Mr Piyush Shah, *for Respondents Nos. 2 to 4.*

CORAM: G.S. PATEL, J.
DATED: 11th December 2019

PC:-

1. On instructions Mr Shamim seeks leave to withdraw the Arbitration Petition with liberty to adopt appropriate civil proceedings against all four Respondents, including for relief on the basis that Respondents Nos. 2, 3 and 4, whether in collusion with officers of the 1st Respondent or otherwise, unlawfully and illegally sold property that was of the sole ownership of the Petitioner.

2. The Petitioner has raised questions of forgery. In view of the decision of the Supreme Court including in *A Ayyasamy vs A Paramasivam & Ors.*¹ these are not matters that can be taken to

¹ (2016) 10 SCC 386.

arbitration, particularly since there are already pending criminal proceedings.

3. Leave granted with liberty as prayed.

4. It is clarified that for the purposes of Limitation Act that not only was the Petitioner bona fide pursuing this petition and associated proceedings, but, by the order of RD Dhanuka J dated 12th February 2015 in a previous Arbitration Petition (L) No. 675 of 2013, the arbitral award dated 29th November 2005 had to be set aside by consent as far as the sole Petitioner is concerned, simply on the ground that she was not even served. Evidently, if she was not served, there could have been no binding award against her and it is only after that that the Petitioner has been pursuing such remedies as she has been advised, including the present Petition. The Petitioner is clear in her understanding that under advice only now received there is no remedy in arbitration that she can or wishes to pursue.

5. The Arbitration Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)