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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 401 OF 2017

Rafik Ahmed Gafoor Multani	...Petitioner
<i>Versus</i>	
Shaid Ahmed Gafoor Multani And Anr	...Respondents

Mr Ashish Dubey, *for the Petitioner.*
Mr Deepak S Jadhav, *for Respondents Nos. 1 and 2.*

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

PC:-

1. The parties appear to be running a guest house called the Asha Guest House from B Block, Maulana Shaukatali Road, Mumbai 400 007. The business seems to be spread over the first, second and third floors and occupying flats for Units 8, 9, 10, 11 and 12.

2. Between the parties there was first a Deed of Partnership dated 14th December 2004. This *inter alia* mentioned in Clause 2 that the parties were running a guest house. It mentions these five flats. The agreement accepts that these are all tenanted and provides that none of the parties would claim exclusive tenancy of any of

these premises. There is also a reference to certain terraces in the building.

3. There is then a supplementary Deed of Partnership dated 11th May 2006 at page 20. In Clause 3(b) an agreement is noted that the combined premises are being used to run this guest house and again the five flats are mentioned and an agreement is noted that none will claim exclusivity this partnership firm is said to be at will.

4. Clause 20 is the arbitration agreement and it is most unhappily worded. This is how it reads:

“20. ARBITRATION:

If any dispute shall arise between the parties/their legal representatives hereto in respect of the conduct of the business of the partnership or in respect of interpretation, operation or enforcement of any part of this deed or in respect of any other matter, cause of things whatsoever, herein otherwise provided for the same shall be referred for adjudication subject to the provision of the Indian Arbitration Act, 1940 or any statutory modification thereof for the time being in force, whose decision shall be binding to the parties and their legal representatives.

Further it is agreed between the parties hereto that in case of their being any disputes and differences between the parties all of three partners shall have their own Flat's Floor. If dispute not solved then they will separate the above said their own flats with good wishes.”

5. Parties agree that the reference to the Arbitration Act, 1940 is clearly an error and that the intention was to make a reference to the

Arbitration and Conciliation Act, 1996. Since this is accepted by consent I will note it and accept it.

6. The present petition under Section 9 of the Arbitration and Conciliation Act 1996 was filed in 2017. There is no ad-interim or interim order. Paragraph 16 of the petition says that the petitioner has not invoked arbitration at all. There is recital of complaints and cross-complaints being made. The notice at Exhibit “C” at page 33, said to be a notice of dissolution, expresses the petitioner’s desire to retire from the firm. Whether this sufficiently constitutes a notice of dissolution of the firm (the partnership being at will), or even is sufficient notice of the petitioner actually retiring from the firm is left open.

7. Having regard to these circumstances, I do not believe that any interim order let alone an ad-interim order is possible. It is not possible to accept the contention that the petitioner has a right to exclusive use and occupation of Flat No. 8. There is nothing to show this entitlement. The respondents maintain that this is being used as the reception and the common area of the guest house. There are clear provisions in both documents that none of the parties will claim such exclusivity. These cannot be ignored. If there is any subsequent agreement or understanding this will have to be pleaded and proved.

8. The fact that the petitioner has after his notice at page 33 set up his own business and obtained a Shops and Establishment Act license is totally irrelevant. It cannot confer on him exclusivity to

any portion of the premises used for the partnership business, at least price facie.

9. Now the parties agree to refer their disputes to the sole of an Advocate of this Court. They leave the choice of Advocate to this Court.

10. There is no impediment to the appointment of arbitrator.

11. By consent, Mr Kamal Khata, learned Advocate of this Court, is hereby nominated to act as a Sole Arbitrator. Hence the following order:

(a) **Appointment of Arbitrator:** By consent, Mr Kamal Khata, learned Advocate of this Court, is hereby nominated to act as a Sole Arbitrator.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to him by the Advocates for the Applicant within one week from today of the order being uploaded.

(ii) In addition, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator within one week of the order being uploaded, at the following postal and email addresses:

Arbitrator/s Mr Kamal Khata, Advocate

<i>Address</i>	Techno Heritage Building, 2nd Floor Nagindas Master Road, Fort Mumbai 400 ..001
<i>Mobile</i>	+91 98200 88706
<i>Email</i>	kamal.khata@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email id.

- (f) **Interim Application/s:** Liberty to the parties to make an interim application or interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. The present application under Section 9 will be presented and treated as an application under Section 17. All affidavits in reply already filed to be treated as replies to the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits. The application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
- (k) **Contentions kept open.** Rival contentions are kept open and will be unaffected by any observations in this order.

12. The arbitration petition is disposed of in these terms. There will be no order as to costs.

13. All contentions kept open.

(G. S. PATEL, J)