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

ARBITRATION PETITION NO.1290 OF 2015

Mrs. Mansi Shamsunder Kulkarni … Petitioner
Versus
Mr. Ganpat Jiwaji Kulkarni
And Another … Respondents

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Mr. H.G. Dharmadhikari a/w Mr. D.A. Bhalerao for the Petitioner.
Mr. Santosh P. Shetye for the Respondents.

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CORAM : S.C. GUPTE, J.

DATE : 4 FEBRUARY 2019

P. C. :

. Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by a Sole Arbitrator in a reference arising out of disputes between partners. The partnership contains an arbitration clause.

3 It is an admitted position that the Petitioner herein, who a partner of the firm of Lata Plastic Works with the Respondents herein, had sent her resignation letter, which was duly accepted by the continuing partners. It was a common case of all parties that as of 01 April 2012, the Petitioner had stood retired from the partnership. The Petitioner, accordingly, prayed for accounts as of the date of her retirement. The learned arbitrator appears to have accepted the Petitioner's case that she had retired with effect from 1 April 2012 and that such retirement was accepted by the

continuing partners. Yet, the arbitrator directed determination of the Petitioner's share on accounts being taken as of the date of the firm's dissolution, which was on 11 May 2013. The arbitrator's view is clearly an impossible view having regard to the relevant provisions of Indian Partnership Act, 1932 ("Act"). The Act allows a partner to retire (Section 32) with consent of all other partners or in accordance with an express agreement by the partners or where the partnership is at will, by giving a notice in writing to all other partners of his intention to retire. Upon retirement of a partner, he is entitled to settlement of accounts as between him and the continuing partners, and without such settlement, at his option, either to share profits since he ceased to be a partner as may be attributable to his share in the property of the firm or to receive interest at the rate of six per cent per annum on the amount of his share in the property of the firm. The arbitrator appears to have ordered settlement of accounts as of the date of dissolution of the firm in the present case purportedly on the ground of the Petitioner having purportedly failed to sell her share in the property, i.e. the gala of the firm, and her subsequent conduct in addressing letters to the bank for freezing of the account of the firm and closure of the business of the firm as a result. If she resisted making up of the accounts of the firm as of the date of her retirement, the Petitioner could always have been made to account for the resultant damage to the continuing partners. The arbitrator could have refrained from awarding any interest on the amount of her share or even award compensation against her for the damage suffered by continuing partners as a result of her refusal to co-operate with them for making up the accounts. Without going into any of these issues, the arbitrator's conclusion that accounts should be made up as of the date of dissolution of the firm on 11 May 2013 is clearly an impossible view. It is a view which no fair or judiciously minded person would have taken having regard to the law of partnership concerning rights of an outgoing partner.

4 Accordingly, the impugned cannot be sustained. The Arbitration Petition is allowed by setting aide the impugned award dated 3 March 2015.

(S.C. G UPTE, J.)