

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

ARBITRATION PETITION NO.405 OF 2016

Rajnikant B. Khadawala

And Others

... Petitioners

Versus

Manhar P. Khadawala

And Others

... Respondents

WITH

ARBITRATION PETITION NO.627 OF 2016

Manhar P. Khadawala

... Petitioner

Versus

Nirmala M. Khadawala

And Others

... Respondents

WITH

ARBITRATION PETITION NO.933 OF 2016

Leelavati R. Suratwala

... Petitioner

Versus

Nirmala M. Khadawala

And Others

... Respondents

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Mr. Y.V. Divekar and Ms. Sayali Gharpure I/b Divekar & Co. for the
Petitioners in Arbitration Petition No.405 of 2016.

Mr. Pankaj Thatte for Respondent No.3 in Arbitration Petition No.405 of
2016 and Respondent No.1 in Arbitration Petition Nos.627 of 2016 and
933 of 2016.

Ms. K.C. Nichani I/b Mr. Amit Sheth for the Petitioner in Arbitration
Petition No.627 of 2016 and for Respondent No.1 in Arbitration Petition
No.405 of 2016.

Mr. Z.A. Jariwala I/b Thakore Jariwala & Associates for Respondent No.2 in Arbitration Petition No.405 of 2016 and Arbitration Petition No.627 of 2016 and the Petitioner in Arbitration Petition No.933 of 2016.

Mr. D.R. Shetty, Court Receiver present.

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CORAM : S.C. GUPTE, J.

DATE : 22 APRIL 2019

P. C. :

. After the matter has been heard at some length, by consent of all parties, the following order is passed :

(i) The impugned order dated 22 October 2015 is set aside to the extent it orders reaccounts of the suit firm and rendition of account upto 17 July 2003;

(ii) It is ordered that that the matter of accounts of the firm is remitted to the sole arbitration of **Ms. Manjiri Shah, Advocate**, subject to her disclosure and consent;

(iii) It is made clear that for such account, the respective claims of the parties shall be considered only to the extent they fall within the period of limitation, reckoning the date of invocation of arbitration reference as 23 June 2003. Every claim of a party coming within this period, including the claim for interest, if any, shall be considered by the arbitrator whilst taking the account of the suit firm;

(iv) It is also clarified that correctness of the entry of Rs.6,41,047/- made in the capital account of Hiragauri Khadawala (mother of the original Petitioner) shall be considered by the learned arbitrator on the plea of the Petitioner that this entry was made not as of 1 April 2000, but sometime in October 2000, i.e. within the period of limitation referred to above. All rights and contentions of the parties on merits in this behalf are kept open;

(v) Learned Counsel for Respondent No.2, upon taking instructions from his client, states that his client accepts the deed of partnership dated 4 August 1999. The statement is accepted;

(vi) Court Receiver, High Court, Bombay, appointed as Receiver of the suit firm, shall disburse a sum of Rs.14,00,000/- towards ad-hoc payment of the share of Respondent No.2 (Leelavati R. Suratwala). This amount shall be disbursed from the account of Arbitration Petition No.262 of 2003. The amount coming to her share shall be determined finally after accounts are taken as ordered above. In case, as a result of taking of final accounts, Respondent No.2 is shown owing any amount to the firm from out of the payment disbursed to her, as above, she shall bring in that amount to the account of the suit firm;

(vii) The pleadings as well as oral and documentary evidence

tendered by the parties shall be treated as their respective pleadings and evidence by the learned arbitrator. The reference shall be heard on remand from the stage of oral submissions only;

(viii) The arbitrator shall endeavor to dispose of the reference and declare her award as expeditiously as possible and preferably within a period of six months from today;

(ix) Save and except as stated hereinabove, the rest of the award of the learned arbitrator dated 22 October 2015 is sustained;

(x) Based on the original impugned award, namely, the award dated 22 October 2015 and the award to be passed hereafter in accordance with this order, the final arbitration award dissolving the suit firm and making up of its accounts shall be declared by the learned arbitrator;

2 Arbitration Petition No.405 of 2016 is disposed of in the above terms.

3 In view of the disposal of Arbitration Petition No.405 of 2016, and the order passed hereinabove, the other petitions, namely, Arbitration Petition Nos.627 of 2016 and 933 of 2016, are disposed of, as not pressed. The rights and contentions of the parties in these petitions shall, however,

be open to be agitated before the new arbitrator to the extent as indicated above.

(S.C. GUPTE, J.)