IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1535 OF 2015
WITH
NOTICE OF MOTION (L) NO.1019 OF 2016
IN
ARBITRATION PETITION NO.1535 OF 2015

Pradeep Sakharam Sangle ....Applicant/Petitioner
vs
Varadraj Vishnu Mhapsekar ...Respondent

AND
ARBITRATION PETITION NO.1470 OF 2015

Varadraj Vishnu Mhapsekar ....Petitioner
vs
Pradeep Sakharam Sangle ...Respondent

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Mr. Rajiv Singh, i/b. Mr. Mohan Khatavkar, for Petitioner in ARBP/1535/15 and for Respondent in ARBP/1470/15.

Mr. A.M. Vernekar, for the Respondent in ARBP/1535/15 and for Petitioner in ARBP/1470/15.

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CORAM : S.C. GUPTE, J.

DATED: 29 JANUARY, 2019

<u>P.C.:</u>

. This arbitration petition challenges an award passed by an arbitral tribunal of three arbitrators.

2. Disputes between the parties arose out of a partnership agreement. The partnership firm of Rajdeep Enterprises was established

by the parties in 1993, both having 50% share in the firm. The Petitioner, who was the claimant before the arbitral forum, had invoked the arbitration agreement in 2007, in pursuance of which the present arbitration reference was held. The Respondent filed his counter-claims in the reference. The arbitrators awarded the Petitioner's claims as also some of the counter-claims of the Respondent. The majority award dissolved the partnership firm and worked out the counter-claims payable by the Petitioner to the Respondent in the sum of Rs.70,28,194.83. Out of the Petitioner's claims, one claim (Issue No.14) was granted in the sum of Rs.71,250/-. The majority arbitrators, accordingly, awarded a net amount of Rs.69,56,94.83 in favour of the Respondent. The award on the Respondent's counter-claims has been challenged by the Petitioner in the present petition.

3. The challenge mainly pertains to four aspects of the award. The first relates to the ownership of a property at Bandra ('Bandra property'), which was claimed by the Respondent as a partnership property, whereas it was the case of the Petitioner that it was acquired by him alone and belonged to him solely. The arbitrators have relied on the balance sheets of the partnership, where the Bandra property has been disclosed as a partnership asset. Learned Counsel for the Petitioner submits that this property was acquired prior to the partnership. Whatever may be the case on acquisition of the property, if the arbitrators were to hold that the property was brought into the partnership hotchpot and was treated as a partnership asset and, on that basis, various benefits, such as depreciation, had been claimed by the parties, the treatment of this property as a partnership property is

nothing but a possible view, and does not merit any interference under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act'). The finding in respect of the partnership firm's ownership of the Bandra property is based on evidence. The arbitrators have not taken into account any irrelevant or non-germane material or disregarded any relevant or germane material for arriving at that finding. There is, accordingly, no warrant for the challenge Court to interfere with it.

4. The second aspect pertains to the manner of sharing of the consideration for this property. The Bandra property was admittedly sold by the Petitioner in the year 2008. It was the Petitioner's case that even if the Respondent were to be held to be entitled to share its consideration, the property having been sold for a sum of Rs.16.50 lakhs, the Respondent could not claim anything over Rs.8.25 lakhs. The arbitrators proceeded on the footing that the property was sold at an undervaluation. The arbitrators in this behalf considered various extensions to the property, which were reflected in the assessment of the property in the municipal records, but which did not find place in the registered document for transfer. Relying on this material and applying ready reckoner rates to the total area assessed by the Municipal Corporation, the arbitrators arrived at the sum of Rs.35 lakhs as the correct valuation of the Bandra property and, accordingly, awarded a sum of Rs. 17.50 lakhs to the Respondent. No fault can be found with even this assessment of the learned arbitrators. The assessment is based on some evidence, namely, the municipal records in respect of the property and the ready reckoner value of per square foot rate of construction. It is again a possible view and does not call for any

interference under the jurisdiction of this Court under Section 34 of the Act.

5. The third aspect of the Respondent's claim is the unauthorised diversion of funds belonging to the partnership of Rajdeep Enterprises by the Petitioner. The arbitrators accepted the Respondent's case that ever since 1993, amounts were secretly siphoned off by the Petitioner by opening a proprietorship account in the same name as of the partnership firm in another bank and diverting funds meant for the partnership to this account and siphoning off the same by self withdrawals. The arbitrators accepted the Respondent's case that this was noticed by the Respondent when pay-in-slip books of this account were found by him. The arbitrators, after going through the bank passbook and pay-in-slips, came to a conclusion that the total amount of about Rs.83,96,028.65 lakhs reflected in the account was siphoned off by the Petitioner from the partnership account and he should be made to account for the same. The arbitrators, accordingly, granted an award in the sum of 50% of that amount, namely, Rs.41,98,014.33 to the Respondent. Once again, there is no infirmity to be found in the impugned award in connection with this claim. The siphoning off of amount, first, by secretly diverting funds from the partnership account to a proprietorship account of the Petitioner opened with the same name and, thereafter, withdrawing sums from that account, are pure questions of fact. The arbitrators have relied on various materials and circumstances in this behalf. It is pertinent to note that in his defence, the Petitioner had never disputed the fact of having opened an account in the firm's name in another bank and diverted funds of the partnership to

that account. What was submitted by the Petitioner was that this account was opened with the knowledge of the Respondent and the funds in the account were meant for meeting all unofficial needs of the firm. This part of the Petitioner's claim was not accepted by the majority arbitrators. That is on assessment of evidence. There is adequate discussion in the impugned award on this aspect. Even this aspect of the award does not merit any interference under the provisions of Section 34 of the Act.

6. The fourth aspect of the matter involved the alleged diversion of the partnership business to M/s. G.S. Commercial Corporation of which the Petitioner's wife was a proprietress. It was the case of the Respondent that in all 23 clients of Rajdeep Enterprises were diverted by the Petitioner in connivance with his wife. According to the Petitioner, G.S. Commercial Corporation had its own business; the Respondent was aware of this business; the Respondent was also carrying on same business likewise in the name of M/s. Madhumey Udyog, which was a proprietorship of his wife. The majority arbitrators after appreciating the oral and documentary evidence on record held in favour of the Respondent. The arbitrators held, as a finding of fact, that the Petitioner was carrying on the same business as the partnership of Rajdeep Enterprises and siphoning off and diverting partnership funds to such business. The arbitrators (per D.G. Deshpande) observed that there were three questions to be answered in this behalf : (i) whether the Respondent had knowledge of such diversion of business; (ii) whether mere knowledge of the other partner would exonerate the Petitioner from accounting for such diversion; and (ii) whether carrying on of the

same business as the partnership was permissible to a partner. The arbitrators held that under Section 16 of the Partnership Act, no partner could carry the same business in competition to the business of the firm. Even otherwise, that was the provision in the partnership deed in the present case. Since the business was carried on in competition with the partnership, the partner had committed breach both of the Partnership Act and the Partnership Deed. The arbitrators held that knowledge of the other partner was of no consequence so far as this breach was concerned. Since the business was admittedly carried on and material as well as clients were diverted from the partnership firm, the arbitrators held the Petitioner to be accountable for the business of G.S. Commercial Corporation. Once again, these are clearly possible views. The award on this aspect is supported by evidence. No irrelevant or non-germane material is considered, or relevant or germane material is disregarded by the arbitrators in arriving at their conclusions. The arbitrators' views on these aspects cannot be described either as views which no fair or judiciously minded person would have taken or views that would shock the conscience of the Court.

7. In the premises, there is no merit in the petition. The petition is dismissed.

8. As for the companion petition filed by the Respondent herein, namely, Arbitration Petition No.1470 of 2015, learned Counsel for the Respondent does not press his petition and seeks leave to withdraw the petition. The petition is dismissed as withdrawn with no order as to costs. Refund of Court fees in accordance with the rules.

9. In view of the dismissal of the petition(Arbitration Petition No.1535 of 2015), the notice of motion (Notice of Motion (L) No.1019 of 2016) does not survive and the same is also disposed of.

(S.C. GUPTE, J.)