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

ARBITRATION PETITION NO.575 OF 2017

Dayabhai S. Dhimmar	...Petitioner
V/s.	
Urmilaben M. Dhimmar	...Respondent

Mr.Mihir Govilkar i/b Govilkar & Associates for the Petitioner.

Ms.Rekha Shinde i/b Legal Chartered for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 26TH JUNE, 2019.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioner has impugned the award dated 8th May, 2017 rendered by the learned arbitrator thereby dissolving the partnership firm as on 16th August, 2009 and declaring the share of both the partners at 50% in the assets and properties of the suit firm M/s.Gita Engineering Company as on the date of dissolution dated 16th August, 2009.

2. Learned counsel for the petitioner has impugned the arbitral award on the ground that the respondent was not educated and after the demise of her husband, the petitioner had all through out carried out the business alone and was taking care of the

education and other needs of the respondent and her children.

3. The arbitral award is also challenged on the ground that the petitioner does not want the suit firm to be dissolved and want to continue the business.

4. A perusal of the record indicates that though the respondent had claimed share at 60% in the assets and the properties of the suit firm, on the basis of the documents executed between the parties, the learned arbitrator has rightly rendered a finding that both the partners were entitled to equal share in the assets and the properties as on 16th August, 2009.

5. Insofar as the submission of the learned counsel for the petitioner that he was taking care of the respondent and her children and that the respondent was uneducated and was unable to make any contribution in the suit firm is concerned, the fact remains that there was no change in constitution of the firm. The partnership firm admittedly continued till the date of its dissolution on the same terms and conditions. Both the partners were thus equally entitled to equal share in the assets and the properties of the suit firm. Even if the argument of Mr.Govilkar, learned counsel for the petitioner is accepted that his client was taking care of the respondent and her children, that would not increase the share of the petitioner in the assets and the properties of the suit firm.

6. Learned arbitrator after issuing a direction of dissolution of the suit firm has rightly directed the learned Court Receiver to sell the movable as well immovable properties forming part of the assets of the suit firm and has already provided for bidding after giving opportunities to both the parties on the basis of the valuation report dated 7th August, 2012 obtained by the learned Court Receiver.

7. Mr.Govilkar, learned counsel for the petitioner states that his client is ready and willing to purchase movable properties as per the valuation report dated 7th August, 2012 obtained by the learned Court Receiver. In my view, since the learned arbitrator has rendered an opportunity to both the parties to bid before the learned Court Receiver, the learned Court Receiver shall accept the bid of the parties whose bid is found higher. Learned counsel for the respondent states that her client is also ready and willing to participate in the bid as may be conducted by the learned Court Receiver and in terms of the award rendered by the learned arbitrator. If the bid of the petitioner is on the higher side, the learned Court Receiver can accept such bid. The statement is accepted.

8. In my view, the learned arbitrator has rendered the impugned award after considering the pleadings, documents and evidence and have rendered various findings of fact which being not perverse, cannot be interfered with by this Court in the petition filed

under section 34 of the Arbitration & Conciliation Act, 1996. The petition is devoid of merit and is accordingly dismissed. The learned Court Receiver is directed to proceed with the sale of the movable as well as immovable properties as directed in the impugned award expeditiously.

9. All the parties as well as the learned Court Receiver to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)