

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

ARBITRATION PETITION NO. 37 OF 2012

M/s.Concept Developers & Ors.	...Petitioners
vs	
Jayantibhai Rambhai Patel & Anr.	...Respondents

WITH
ARBITRATION PETITION NO. 864 OF 2011

Jayantibhai Rambhai Patel	...Petitioner
vs	
M/s.Concept Developers & Ors.	...Respondents

Dr.Abhinav Chandrachud I/b. Mangesh Parte for Petitioners in ARBP 37-2012 and for Respondent Nos.1 and 2 in ARBP 864-2011.
Mr.Ashok Kumar Singh for Respondent No.1 in ARBP 37-2012 and for Petitioners in ARBP 864-2011.

CORAM : S.C.GUPTE, J.

DATE : 25 FEBRUARY 2019

P.C. :

These cross petitions challenge an award passed by a sole arbitrator in a partnership dispute.

2 Respondent No.1 to Arbitration Petition No.37 of 2012 was the claimant before the arbitrator. His case was that Respondent No.2 herein (who was Respondent No.4 before the arbitrator) had acquired rights for development of property bearing Survey No.27, Hissa No.3, CTS No.286 at Vile Parle, Mumbai (“the suit property”) from the owners thereof and these rights were transferred to Petitioner No.1 partnership firm under an agreement of 10 April 1981; pursuant to this agreement, Petitioner No.1

had commenced work and partly constructed a building (RCC construction of 4 slabs and some brick work on the ground and first floor) on the property; since existing partners of Petitioner No.1 firm were short of funds, they approached the claimant for funds; the parties entered into two documents, one titled as a Memorandum of Understanding ('MOU') and the other as a Deed of Joint Venture Partnership ('JVP'), both dated 19 May 1988, whereby the claimant along with the existing partners and the deceased Manohar Bhaskar Kowli, who was also one of the partners of Petitioner No.1 firm, agreed to become a partner of the firm. The claimant was referred to as "incoming partner", whilst the then existing partners were referred to as "continuing partners". According to the claimant, he had contributed a sum of Rs.46 lakhs to the deceased Manohar Bhaskar Kowli and other existing partners towards his 50% share and in addition, had also paid some amount towards carrying out the construction work. It was submitted that since there was no progress in the construction work and his money contributed to the firm was blocked up for many years, he had called upon the partners of the firm to reimburse his payment. He had, accordingly, invoked the arbitration agreement forming part of the JVP. That is how the learned arbitrator adjudicated the disputes. The claimant had asked for specific performance of the MOU and the JVP. In the alternative, he had sought dissolution of the firm constituted by the JVP and account of his share in the assets of the firm.

3 It was, on the other hand, the case of the continuing partners that the documents were sham and bogus and of no effect. It was submitted that the claims were also barred by the law of limitation. The continuing partners also submitted that their agreement of 10 April 1981,

by which they took over development rights in respect of the suit property, had been terminated by Respondent No.2 herein (Respondent No.4 in the reference).

4 The claimant gave oral evidence. He was cross-examined by advocates of the continuing partners as also of Respondent No.2 herein. Respondent No.2 herein also gave oral evidence. The continuing partners, however, chose not to lead any oral evidence.

5 On these pleadings and evidence, the learned arbitrator held that the firm could be dissolved treating the date of institution of the arbitration proceeding as an act of dissolution. The arbitrator held that the relief was not barred by limitation. The learned arbitrator held that though, ordinarily, on dissolution of a partnership, there should be an order for accounts, the facts and circumstances of the present case had established that there was no activity whatsoever effective from the date of the claimant joining the partnership firm. The arbitrator particularly noted that there was no activity whatsoever for maintaining accounts during the period of three years immediately preceding the date of commencement of arbitration and accounts prior to the said period, in any case, were barred by limitation. The arbitrator accordingly did not grant any relief for taking of accounts of the business. Considering, however, that a sum of Rs.25 lakhs was admittedly received and acknowledged by continuing partners, as stated in the MOU, the arbitrator was of the view that there was no reason why such payment should not be accepted by him as a matter of fact. The arbitrator noticed that none of the continuing partners had entered the witness box to deny the receipt of this amount or explain the

circumstances under which they were required to sign the MOU. The arbitrator noticed that Respondent No.2 herein (Respondent No.4 before the arbitrator), who had signed as a witness, had made certain wild allegations to the effect that the document was fabricated, without any evidence in support of such allegations. The arbitrator observed that a party making allegations of fraud had a heavy onus on him to prove such allegations. The arbitrator accordingly held that since the dissolution was claimed from the date of the statement of claim and the statement of claim was filed on 10 April 2006, the JVP stood dissolved with effect from that day. The arbitrator accordingly declared dissolution of the firm of Concept Developers with effect from 10 April 2006. The arbitrator directed the firm and its continuing partners to pay a sum of Rs.25 lakhs together with interest at the rate of 12% per annum from 10 April 2006 till payment to the claimant. All other reliefs claimed in the statement of claims were rejected.

6 The views of the learned arbitrator on both dissolution of the firm and the relief to be granted to the claimant based on such dissolution, are clearly possible views of the material placed before him by the parties. The views are supported by some evidence, and cannot be said to be either based on no evidence or such that no fair or judiciously minded person could have arrived at or as would shock the conscience of the court. The award, accordingly, does not merit any interference under Section 34 of the Arbitration and Conciliation Act, 1996.

7 Learned Counsel for the Petitioners, i.e. Concept Developers and its original continuing partners, submits that the arbitrator could not

have treated filing of the suit as a notice of dissolution within the meaning of Section 43 of the Partnership Act. Relying on the decision of the Supreme Court in the case of **Banarsi Das vs. Kanshi Ram**¹, learned Counsel submits that the mere fact that the party going to court asks for dissolution does not amount to a notice of dissolution. Learned Counsel submits that the dissolution claimed, thus, cannot be treated as a dissolution under Section 43 of the Partnership Act, but must be treated as a dissolution by court under Section 44. Learned Counsel submits that where a suit for dissolution of a partnership or taking of its accounts is filed before the court under Section 44, the court, before passing any final decree, must pass a preliminary decree declaring the proportionate shares of the parties, fixing a day on which the partnership stands dissolved or is deemed to have been dissolved, and ordering that accounts be taken and other acts be done, as it thinks fit.

8 No doubt, mere filing of a suit for dissolution, even in a case where the partnership is at will, may not amount to giving of a notice of dissolution within the meaning of Section 43 of the Partnership Act. A partnership at will is dissolved by a partner by giving notice in writing to his other partners of his intention to dissolve the firm and the firm is then dissolved as from the date mentioned in the notice of dissolution, and if no date is so mentioned, as from the date of communication of the notice. In the case before the Supreme Court in **Banarsi Das**, a partner had originally filed a suit seeking dissolution of the partnership. That suit was dismissed for default and no decree was ever passed therein. It was in the backdrop of these facts that the Supreme Court said in **Banarsi Das** that the partnership in that case, even if it be at will, could not be said to have been

¹ AIR 1963 SC 1165 (V 50 C 176)

dissolved because of the institution of the suit. As in the case before the Supreme Court, one can conceive of many cases where mere filing of a suit for dissolution, even in case of a partnership at will, does not amount to a notice of dissolution of the firm within the meaning of Section 43 of the Act. The facts of our case, however, present an entirely different picture. Here, the party went before the court with an alternate plea of dissolution and accounts of a firm, which was admittedly at will, and the arbitrator came to a conclusion that though the parties had entered into a JVP, there was no activity in the firm and yet, since the claimant, as a partner of the firm, was entitled to pray for it, dissolution of the firm could always be ordered and such dissolution could be from the date of the suit or the date mentioned in that behalf as the date of dissolution, i.e. the date of filing of the statement of claim by the claimant in the present case. What the Supreme Court said in **Banarsi Das** was that mere filing of a suit in law does not amount to giving of a notice under Section 43 of the Partnership Act. That, however, does not mean that in a given case, considering that the partnership is at will, when a party approaches the court for dissolution without such suit being preceded by a formal notice under Section 43, the court either cannot order dissolution or cannot order dissolution with reference to the date of filing of the suit or the date mentioned in that behalf by the Plaintiff as the date of dissolution, for example, the date of the statement of claims as in the present case. The view taken by the learned arbitrator in this behalf, namely, that there was a partnership between the parties; that there was no activity in respect of that partnership; and that partnership had come to be, or should be, dissolved as of the date of the statement of claim with effect from 10 April 2006, are all possible views. These do not merit, as I have noted above, any

interference under Section 34 of the Arbitration and Conciliation Act, 1996.

9 There is, accordingly, no merit in the present arbitration petition. The arbitration petition is dismissed. No order as to costs.

10 So far as the companion petition of the original claimant, i.e. Arbitration Petition No.864/2011, is concerned, the case urged by learned Counsel in support of his challenge to the award is that the arbitrator, having found a partnership as a matter of fact and ordered its dissolution, was bound to order making up of the accounts of the partnership after considering the market value of the suit property and award the claimant's share in such property. The arbitrator, in the first place, did not find any evidence in support of the claimant's case that he had contributed any amount to the partnership over and above Rs.25 lakhs, the receipt of which was acknowledged in the MOU. This was by way of a part payment of the originally agreed capital contribution. After having referred to the various clauses of the JVP and considering the evidence on record, the learned arbitrator came to a conclusion that the work undertaken by the original partnership was at a standstill for want of finance; the continuing partners brought in the claimant as a person, who was willing to finance, and created a JVP; the value of capital assets was estimated at Rs.92 lakhs and to equate the parties' capital, the claimant was to bring in Rs.46 lakhs; the remaining work was estimated to be carried out at an expense of Rs.60 lakhs and to ensure that the amount was properly utilized, a sum of Rs.30 lakhs from out of these Rs.46 lakhs was to be kept separately in an account. In a sense, this was an investment in a project and the same was secured by a deed of partnership, where the claimant's share would be

50%; once the project was completed, the claimant was to cease to be a partner with no claim in the other projects of the firm. The transaction was, thus, in the nature of a joint venture partnership with Petitioner No.1 firm. The learned arbitrator found the prayers concerning specific performance of the MOU and JVP as misconceived and not maintainable. The learned arbitrator noted that the alternative prayer was in the nature of damages and was not maintainable in a partnership action for dissolution. Moreover there was no evidence in this behalf. The learned arbitrator, in the premises, only considered the prayers for dissolution of the JVP constituted under the deed of partnership dated 19 May 1988 and for accounts. As noticed above, the learned arbitrator did not find any difficulty in granting the prayer for dissolution. The arbitrator, however, held that such dissolution did not mean that the claimant was not entitled to his share of the assets and the capital. There was no movable or immovable assets attributable to him. The only asset was the capital contributed by him. Since there was no evidence from the continuing partners as to how the capital amount was spent, the claimant was entitled to get refund of his contribution towards capital. So far as the value of FSI, stilt and car parking, etc. claimed by the claimant was concerned, in the absence of any particulars of claim, these were rejected by the learned arbitrator. As regards the claimant's case of having actually contributed Rs.46 lakhs as well as a sum of Rs.15.26 lakhs over and above his capital contribution, the arbitrator held that there was no evidence in support of these payments; the only evidence was in support of the payment of Rs.25 lakhs; and that the claim for balance sum would have to be rejected. These again are clearly possible views of the material placed by the parties before the learned arbitrator. The award on these aspects cannot be termed as an

impossible view, or a view which no fair or judiciously minded person would have taken or as would shock the conscience of the court.

11 There is, accordingly, no merit in Arbitration Petition No.864 of 2011. The petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)