IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 479 of 2018

Manvir Singh Kaushal and Ors ..Petitioners.
Vs
Surinderpal Singh Kaushal ..Respondent.

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Ms Mamta Sadh a/with Aparna Shinde for the petitioner.
Mr Ashish Kamat a/with Mr. Aseen S. Nafade, Mr. A.P. Singh I/by S.K. Shrivastav & Co. for the Respondent.
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CORAM : B. P. COLABAWALLA, J.
DATED : 18th JANUARY, 2019.

P.C. :

1. This arbitration petition has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short **"the Act"**) challenging an order passed by the Arbitral Tribunal dated 17th August, 2017 under section 17 of the Act. The application filed under Section 17 (dated 4th February, 2016), was an application that was preferred by the respondent in the Arbitration Proceedings and who had filed a counter claim. This application (dated 4th

February, 2016) filed by the respondent inter alia sought relief of appointment of a Court Receiver or any other fit and proper person as a receiver of the Partnership firm called "M/s Kaushal Industries" (for short "**KI"**) and M/s Kaushal Equipment Manufacturers (for short "**KEM"**). The additional relief that was sought was a direction against the 1st claimant to pay to the respondent a sum of Rs.20,00,000/- (Rupees Twenty Lakhs) per month towards 50% compensation for making use of the premises at R-38, TTC Industrial Estate, Rabale, MIDC, Navi Mumbai (for short **"the Rabale Premises"**)

2. This application of the respondent was vehemently opposed by the 1st claimant by filing his affidavit-in-reply as well as written arguments. After hearing both the parties, the Arbitral Tribunal appointed a receiver of both the Partnership Firms namely KI as well as KEM with all powers under Order XL of the Code of Civil Procedure, 1908. A further direction was given that the receiver appointed was to hold a preliminary meeting between the parties for the purposes of conducting a bidding between the 1st claimant and the respondent and to select the highest bidder as the agent of the receiver for the Rabale Premises and Gala Nos.18, 19

and 22 at Sardar Pratap Singh Industrial Estate No.3 at Bhandup (West), Mumbai – 400 078 (for short, the **"Bhandup Premises"**). It is this order that is assailed in the present arbitration petition.

3. Before I deal with the submissions of the respective Counsel, it would be necessary to set out a few facts. Initially, the 1st petitioner (1st claimant before the arbitral Tribunal) and the respondent (the respondent before the Arbitral Tribunal) are real brothers. On 17th September, 1984 they entered into a registered partnership deed and formed a partnership firm in the name of M/s KI. The business of KI was carried on from a premises situate at Bhandup. Thereafter, on 14th February, 2004 the 1st claimant and the respondent started a new firm in the name of KEM. In both these firms, the 1st claimant and the respondent were equal partners. Since the business of KEM flourished, the 1st claimant and the respondent started looking for a larger property to carry on the business. Accordingly, in the year 2005 the 1st claimant and the respondent found a suitable industrial premises bearing No. R-38, PTC Industrial Estate, Rabale, MIDC, Navi Mumbai (**"the Rabale premises"**) for carrying on the business. It is undisputed that the Rabale Premises belong to the partnership firm M/s. KI.

4. In 2011, differences and disputes arose between the 1st claimant and the respondent due to which, according to the 1st claimant, it was agreed that they will not operate from the same premises. It was agreed (according to the 1st claimant) that the 1st claimant would operate from the Rabale Premises and the Respondent would operate from the Bhandup premises. According to the respondent, it was expressly decided that this arrangement was only for operational convenience and that the possession and entitlement in respect of the Rabale and Bhandup premises shall be of both, the 1st claimant and the respondent. This was because both of them were equal partners in KI as well as KEM.

5. It also appears that the respondent in his capacity as a partner of KI and the 1st claimant in his capacity as a partner of KEM, entered into a Leave & License Agreement dated 5th April, 2011 under which the Rabale Premises were given on Leave & License to by KI to KEM for a monthly compensation of Rs.12,500/-. It is the case of the respondent that though this Leave & License Agreement was executed by the respondent, it was never to be acted upon and was in fact not signed at the relevant time by the 1st

claimant. It is the specific case of the respondent that though this Leave & License Agreement was in the possession of the respondent, the same was stolen by the 1st claimant, who thereafter put his signature thereon and subsequently got the said document notarized three months later and that too without the respondent being present before the Notary.

6. Be that as it may, on the same date, namely 5th April, 2011, the 1st claimant along with his son Prabhdyot Singh Kaushal, formed a new partnership firm in the same name, namely Kaushal Equipment Manufacturers (for short **"KEM-II"**). Since it was agreed between the parties that they would carry on their business from separate premises (namely, the 1st claimant from the Rabale Premises and the respondent from the Bhandup Premises), that the Leave & License Agreement dated 5th April, 2011 was entered into with KEM-II. I must mention that it is the specific case of the respondent that the forming of KEM-II (and to which he is admittedly not a partner) as well as signing of the Leave and License Agreement by the 1st claimant and it being subsequently notarized, came to the knowledge of the Respondent only subsequently. To further fortify this contention, the 1st claimant also relied upon a

letter dated 8th April, 2011 purportedly addressed by the Partners of KEM to Bharat Co-operative Bank stating that for convenience a separate account has been opened in the name of KEM-II, a partnership firm of the claimant and his son. The signature of the respondent on this letter has been expressly denied by the respondent. It is the case of the respondent that this is a forged and fabricated letter and he has never appended his signature thereon.

7. In any event, in April, 2011, when the respondent one day visited the Rabale Premises, he was shocked to find that he was not being allowed to go inside the premises by the staff. It is at that time that he immediately checked his drawer in which the Leave & License Agreement dated 5th April, 2011 was kept, and found that it was missing. On making this discovery, to put in a nutshell, there was a criminal complaint filed by the respondent against the claimant and an FIR came to be lodged under various Sections of the Indian Penal Code. Thereafter, on 3rd May, 2012 the claimant filed an application under Section 9 before the District Court at Thane for various interim reliefs in which it was pleaded that the 1st claimant was seeking dissolution of the partnership firms M/s. KI and M/s. KEM. On 5th May, 2012 Thane District Court directed the parties to

maintain status-quo, after which, on 17th July, 2012 the claimant invoked the arbitration clause contained in the partnership deed. After invocation of the arbitration clause, the claimant filed a petition in this Court under Section11 of the Act for appointment of an arbitrator.

8. After all this, in the year 2014, the respondent filed Suit No. 88/2014 before the Civil Judge, Senior Division, Thane against the claimant and his son in view of the illegal acts of ousting the respondent from the business and the properties of KI and KEM. This suit is pending. Be that as it may, the Section 11 petition was allowed and disputes were referred to the Arbitral Tribunal. The claimants filed their statement of claim on 24th November, 2015. The statement of defence and the counter claim was filed by the respondent on 5th January, 2016. Thereafter, on 4th February, 2016 an application under Section 17 was filed by the respondent seeking the reliefs, as more particularly set out earlier. It is in this application that the impugned order dated 17th August, 2017 came to be passed and which is assailed in this petition.

9. In this factual backdrop, the learned Counsel appearing

on behalf of the petitioner submitted that the facts of the present case would clearly reveal that in the year 2011 itself the claimant and the respondent had agreed that the 1st claimant will carry on separate business along with his son from the Rabale premises and the respondent will carry on his business from the Bhandup premises. In support of this contention, the learned Counsel relied upon three documents. The first document relied upon was the letter dated 8th April, 2011 which is addressed by KEM to the Manager of the Bharat Co-operative Bank (Mumbai) Ltd., where the partners were having their firm's account. The second was the Leave and License Agreement dated 5th April, 2011 which was executed by the respondent on behalf of KI, as the licensor and the 1st claimant on behalf of KEM, as a licensee. The third are the pleadings of the respondent in RAD Suit No.424 of 2013 filed by the respondent against the claimant's wife in the Court of Small Causes at Mumbai. Relying upon these documents, the learned Counsel submitted that this clearly shows that it was agreed between the respondent and the claimant that the claimant, with the consent of the respondent, was allowed to carry on business in the name and style of KEM-II from the Rabale Premises. The next submission made by the learned Counsel appearing for the 1st claimant (the 1st petitioner herein) was that there was tremendous delay in filing the application for appointment of a receiver. This being the case, this order ought not to have been granted by the Arbitral Tribunal, was the submission. On this count, the learned Counsel argued that a suit was originally filed by the respondent before the Civil Judge, Senior Division, Thane in which no application for appointment of receiver was ever made. For more than two years the 1st claimant has been in-charge of the business of KEM-II from the Rabale Premises. There was absolutely no explanation for this delay and the Tribunal has not given any reasons as to why the receiver ought to be appointed after such an inordinate delay. The last argument that was canvassed on behalf of the 1st claimant was that in any event, it is now well settled that a receiver can be appointed only if the Court comes to the conclusion that it is just and convenient to do so. The learned Counsel submitted that in the facts of the present case and looking to the material on record, especially the letter dated 8th April, 2011, the Leave and License Agreement dated 5th April, 2011 and the pleadings in RAD Suit No.424 of 2013, the balance of convenience certainly not in favour of the respondent for the Arbitral Tribunal to pass such a harsh order of appointing a receiver. For all these reasons, the learned Advocate submitted that the impugned order be set aside. In support of the aforesaid proposition, the learned Counsel appearing on behalf of the claimant, relied upon the following decision.

1) **Tilak Chand Jain vs. Darshan Lal Jain and Anr [AIR 1985 J & K 50]**
2) **Prabhakar Gajanan Naik vs. South Konkan Distilleries & Ors [1997 (2) ALL MR 375]**
3) **Ashok Traders vs. Gurumukh Das Saluja Etc. [AIR 2004 SC 1433]**
4) **Ashok Kumar Mittal v. Ashwani Kapoor and Anr [AIR 2005 Delhi 323]**

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10. On the other hand, Mr Kamat, the learned Counsel appearing on behalf of the respondent, submitted that it is settled law that there are essentially two requirements for appointing a receiver when dissolution of a partnership firm is sought. Firstly, the partnership firm must be at will and secondly, the receipt of notice of dissolution of the partnership firm must be undisputed. Mr. Kamat submitted that in the present case both KI and KEM are partnerships at will. Further, the notice of dissolution was given through the counterclaim which was filed before the Arbitrator. Considering that both these conditions were satisfied, he submitted that in a dispute like present one and which relates to the

dissolution and winding up of the partnership business, a receiver ought to be appointed as a matter of course.

11. Mr Kamat then submitted that the 1st claimant was carrying on business with his son in the firm named KEM-II from the Rabale premises which premises admittedly belonged to the firm KI in which the 1st claimant and the respondent were equal partners. He submitted that the 1st claimant, by carrying on business from Rabale premises to the exclusion of the respondent, was clearly in breach of Sections 14, 15 and 16 of the Partnership Act, 1932 as clearly, the property of the firm, was being applied for purposes of a business other than the one carried on by the firm (in the present case being KI). He submitted that in the facts of the present case, the respondent being a partner, was being excluded from the enjoyment of the Rabale premises which admittedly belonged to KI (a firm of which the claimant and the respondent were equal partners). He therefore submitted that this was a fit case where the Arbitral Tribunal exercised its discretionary jurisdiction and appointed a receiver of the partnership business.

12. As far as the documents relied upon by the claimant are

concerned, Mr Kamat submitted that the letter dated 8th April, 2011 is seriously disputed by the respondent. He submitted that it is the specific case of the respondent that his signature has been forged and fabricated on the said letter. According to Mr. Kamat, it now transpires that two different sets of the letter dated 8th April, 2011 are produced before the Arbitral Tribunal. Whilst one copy of the letter does not bear the stamp of the Bank, the second contains such a stamp. Mr. Kamat submitted that even during the cross-examination of the 1st claimant, he has categorically admitted that the stamp of the Bank appearing on the letter has been put at the time of filing of the affidavit of evidence before the Arbitral Tribunal. Looking to all these facts, Mr. Kamat submitted that at least at the prima facie stage, this letter was of no probative value and therefore correctly discarded by the Arbitral Tribunal.

13. As far as the Leave and License Agreement is concerned, Mr. Kamat submitted that this Leave and License Agreement was originally executed by the respondent on the basis of certain mediation. However, the parties agreed that this Leave and License Agreement was not to be acted upon and therefore the same was not signed by the 1st claimant. According to Mr. Kamat, this Leave and

License Agreement, though being in the custody of the respondent, was stolen by the claimant after which he appended his signature thereon. He submitted that this is clear from the fact that even though the document is dated 5th April, 2011, the same was notarized more than three months later. He submitted that what is also interesting to note is that before the Notary, the claimant has signed for himself as well as for the respondent and the respondent admittedly was never present before the Notary. This has also been admitted by the claimant in his affidavit dated 17th October, 2013 filed before the Bar Council of Maharashtra & Goa in a complaint filed by the respondent against the said Notary and which is pending. Without prejudice to the aforesaid argument, Mr. Kamat submitted that in any event, when one reads the terms of the Leave and License Agreement, there is nothing therein that would even remotely suggest that this Agreement was executed on behalf of KI in favour of KEM-II. This being the case, the reliance placed on this document to establish that the respondent had consented to the claimant carrying on a separate business and in the same name and style as KEM-II from the Rabale Premises is wholly misconceived.

14. As far as the pleadings in the RAD Suit No. 424 of 2013

are concerned, Mr. Kamat submitted that the reliance placed on the same is wholly misplaced in view of the fact that the RAD Suit was filed against the claimant's wife and was not with reference to the Rabale premises but with reference to certain Galas in the Bhandup premises.

15. To conclude, Mr Kamat submitted that in a partnership dispute like the present one and where the partnerships have been dissolved, it is clearly just and convenient to appoint a receiver to ensure that the properties of the partnership are not dissipated till the final order of winding up of the partnership is passed by the Arbitrator. This being the case, the Arbitral Tribunal was fully justified in passing the impugned order, was the submission of Mr. Kamat. Consequently, he submitted that there was no merit in this Petition and the same be dismissed. In support of the above propositions, Mr. Kamat relied upon the following decisions:-

1. **Firm Ashok Traders & Ors Vs. Gurumukh Saluja & Ors, [(2004) 3 SCC 155]**
2. **Smt.Rasilaben Kantilal Kansara Vs. Amratlal Babubhai & Ors. [1987(3) Bom. C.R. 620]**
3. **Dhinkarrai Harilal Parekh & Ors. Vs. Rajendra Dinkarrai Parekh, [Arbitration Appeal No. 18 of 2015 Bombay High Court]**

4 **Mr Gulmali Amrullah Babul & Ors. Vs. Shabbir Salebhai Mahimwala, [Arbitration Petition No. 410 of 2015 Bombay High Court]**

5 **Perin H. Davierwalla Vs. Kobad D. Davierwalla, [2014 (3) Bom. C.R. 551.]**

16. I have heard learned Counsel for the parties at length and had perused the papers and proceedings in this arbitration petition. I have also carefully gone through the impugned order. The learned Arbitral Tribunal has specifically recorded that it is the case of the claimant that in the year 2011 the 1st claimant and the respondent (being partners of KI and KEM) had agreed that the 1st claimant would carry on a separate business along with his son from the Rabale Premises and the respondent would carry on separately his business from the Bhandup premises. This contention of the claimant has been seriously disputed by the respondent. The learned Tribunal has given a finding that the letter dated 8th April, 2011 (and which was relied upon by the 1st claimant) prima facie does not establish these facts as is not an admitted document because the respondent has specifically denied his signature thereon. The Tribunal has pointed out and correctly so, that there were certain lapses and inadequacies in the said letter and which

cannot be conclusively decided at the interim stage and would have to await the final outcome of the arbitration proceedings. As mentioned earlier, as it now transpires, there are two copies of the very same letter that have been produced before the Arbitral Tribunal. One copy bears the stamp of the bank whereas the other does not. In the cross-examination of the 1st claimant he has categorically admitted that the stamp of the Bank was obtained at the time of filing of the affidavit of evidence before the Arbitral Tribunal. Though I may mention that these facts were not available to the Tribunal at the time of passing of the impugned order, these facts have now been brought to my knowledge which seriously puts in doubt the authenticity of the letter dated 8th April, 2011. I, therefore do not find that the Tribunal in any way misdirected itself in coming to its conclusions with reference to this letter.

17. As far as Leave and License Agreement is concerned, much can be said about the same. Though the Leave and License Agreement is dated 5th April, 2011, the same appears to be notarized only on 28th June, 2011. This notarial register is at page 944 of the paper book before me. This notarial register clearly shows that the same is not signed by the respondent at all. In fact, the 1st claimant

has signed this register not only as a partner of KI but also as a partner of KEM. This is clear from the entry 4503 on page 944. Even though the Leave and License Agreement was signed by the respondent on behalf of KI, why the 1st claimant signed the notarial register (in relation to this very document) on behalf of KI has not been explained anywhere. It is not even the case of the 1st claimant that he signed the said register on behalf of KI on the instructions of the respondent or with his consent. This being the case, I find that the story put forward by the 1st claimant that this Leave and License Agreement was entered into by KI with KEM-II appears, at least prima facie, to be a concocted story and casts a serious doubt on the version of the 1st claimant.

18. Even otherwise, on going through the terms and conditions of the Leave and License Agreement (page 743, Volume IV of the paper book), it ex-facie shows that the same has been executed on behalf of the KI by the respondent and on behalf of KEM by the 1st claimant. There is nothing in this Leave and License Agreement that would even remotely indicate that this Leave and License Agreement was executed between KI and KEM-II (and which is a partnership firm which has been started by the 1st

claimant and his son). Another thing which is worthy to note is that this Leave and License Agreement is dated 5th April, 2011 and was only for a period of five years. In other words, this Agreement came to an end on 4th April, 2016. There is absolutely no explanation as to how the 1st claimant or KEM-II continues in these premises even beyond this date. In these circumstances, I find that the reliance placed by the 1st claimant on the Leave and License Agreement to try and somehow establish that the respondent had consented to the 1st claimant starting a business in the same name and style as KEM and from the Rabale premises, is of no substance. Admittedly, the Rabale premises as well as Gala No. 18, 19 and 22 of the Bhandup premises were properties that were taken on lease by the Partnership Firm – KI, of which only the 1st claimant and the respondent are equal partners. These premises (the Rabale premises as well as Gala No. 18, 19 and 22 of the Bhandup premises) could have only been used for the business of KI or at the highest for the business of KEM in which both the claimant and the respondent were equal partners. Neither of these properties could have been applied and used for a business in which one of them was not a partner without consent of such partner. Prima facie, there is no consent. This being the case, the Tribunal was fully justified in appointing a receiver of the Rabale premises as well as of the Bhandup premises consisting of Gala No. 18, 19 and 22 respectively.

19. From the facts as narrated earlier, I am clearly of the view that the equities are loaded in favour of the respondent. The 1st claimant, by forming a new firm with his son in the same name and style of KEM (namely KEM-II), is trying to somehow exclude the respondent from the Rabale Premises. In fact, prima facie, this act of the 1st claimant (of forming this new firm and in the same name and style of KEM) is without the consent of the respondent and is clearly in breach of the statutory provisions of the Partnership Act, 1932. I, therefore, find that the Tribunal has correctly applied the law to the facts before it and then passed the impugned order. According to me, not only is the order passed by the Tribunal fully justified, but is certainly a plausible view that would require no interference in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

20. Having said this, I shall now deal with the judgments cited by the learned Advocate appearing on behalf of the 1st claimant. The first judgment relied upon is a decision of the Jammu

and Kashmir High Court in the case of **Tilak Jain (supra)**. This judgment in paragraph 60 lays down the considerations which are relevant for appointment of a receiver in a suit for dissolution of a partnership firm. This decision states that a partner seeking appointment of a receiver must have a strong case in his favour and the claim asserted by him must be free from doubt. There must be prima facie proof of misconduct against a partner who is said to be in control of the partnership property to the detriment of a partner who seeks the relief. The principles which govern the appointment of a receiver as regards a dissolved partnership are not the same which are taken into consideration in relation to a running partnership business, though element of mis-management of partnership property and its income may be present in both cases. The appointment of a receiver in respect of a dissolved partnership is at the discretion of the Court and by exercising that discretion, the Court would be guided by the consideration of preserving and protecting the property and assets of the dissolved firm and will not permit them to be dissipated or used by one partner exclusively to the detriment and manifest disadvantage of the other partners who are excluded from such property and assets. I fail to see how this decision in any way supports the case of the 1st claimant. If anything, this decision clearly supports the respondent's case. In the facts of the present case, the Rabale premises being the asset of the partnership firm – KI, is sought to be used by the 1^{st} claimant and his son for the business of a partnership firm called KEM-II and to which admittedly the respondent is not a partner. In other words, the Rabale premises being the asset of KI is being used by one of its partners exclusively (namely the 1^{st} claimant herein) to the detriment and manifest disadvantage of the other partner (the respondent herein). This being the case, the decision of the Jammu and Kashmir High Court does not in any way support the case of the 1^{st} claimant but in fact supports the case of the respondent.

21. The next decision was a decision of this Court in the case of **Prabhakar Naik (supra)**. I find that this decision is wholly inapplicable to the facts of the present case. The facts of this case would reveal that in this case there was admittedly a family settlement that was acted upon by the brothers and it is in these circumstances that the Court declined to interfere with the order of the Trial Court. In fact, this Court prima facie found that it was not possible to come to the conclusion that a partnership firm existed between the petitioner and the other brothers after said family

settlement. This decision also therefore is of no assistance to the 1st claimant.

22. As far as the decision of the Supreme Court in the case of **Ashok Traders (supra)** is concerned, this decision is also inapplicable to the facts of the present case. In the case before the Supreme Court a receiver was sought to be appointed of a running business and not a partnership which was dissolved. The dispute was amongst 12 persons who alleged to be partners in the firm, namely Ashok Traders. These 12 parties were grouped into three. For the sake of convenience there was Group 'A', Group 'B' and Group 'C'. Group 'A' had a 20% share in the partnership business and Group 'B' had 18% share. Group 'C' held 62% share. The tussle before the High Court was between Group 'A' and Group 'B' which held 20% and 18% interests respectively. Group 'C' was not before the High Court. However, before the Supreme Court, Group 'C' was represented and supported Group 'B'. The finding recorded by the High Court was that Group 'B' was running the business up to the date of passing of the order. Except bald and general allegations of mismanagement and siphoning of the funds, nothing concrete had been alleged, much less demonstrated to give any colour to the averments made.

Despite this, the High Court thought it fit and proper to appoint Group 'A' as the captain of the ship, for running the business. It was this that was criticized by the Supreme Court. The Supreme Court opined that it is a serious matter to appoint a receiver on a running business. Though the appointment of the receiver was not interfered with, the Supreme Court found that it was unjustified to drive out a person in the actual management of the business and pass on the reins in the hands of those who were not holding the same for nine months out of 12. The Supreme Court was of the view that a better course would have been to allow the conduct of the business to continue in the hands of persons who were doing so till now but at the same time issuing such directions and/or devising such an arrangement as would protect and take care of the interest of those who are not actually running the business and that is what the Supreme Court did. Even this decision, as mentioned earlier, is of no assistance to the 1st claimant. The factual situation before the Supreme Court was completely different from the factual matrix before me. One of the most important factors was that in the case before the Supreme Court, the firm was not dissolved but in fact it was a running business. Despite this, a receiver came to be appointed and the only thing that was changed by the Supreme

Court was the person who was to run the business. In the facts of the present case, both the 1st claimant and the respondent, are equal partners in the partnership business. To balance the equities, the Tribunal has ordered that both the 1st claimant and the respondent would be allowed to bid before the receiver as to who should be allowed to run the business. This being the case, I do not see how the decision of the Supreme Court in the case of **Ashok Traders (supra)** can be of any assistance to the 1st claimant.

23. The last decision relied upon on behalf of the claimant was a decision of the Delhi High Court in the case of **Ashok Kumar Mittal (supra)**. I find that this decision, instead of supporting the 1st claimant, in fact supports the case of the respondent. Paragraphs 20 and 21 of this decision read thus :

> "20. A combined reading of the aforesaid provisions and the judgment pronounced by this Court in "Vidya Devi' (1974 Rajdhani LR 346) (supra) as well as the judgment of the J& K High Court in 'Tilak Chand Jain' (AIR 1985 J & K 50) (supra), reflects that after the dissolution of a partnership firm, no partner has a right to continue the business of the firm except for winding up and to complete the commitments prior to dissolution. None of the partners can be permitted to forcibly oust other partners and take over the business driving others to

go to Courts or before the Arbitrators. Courts cannot encourage the tendency to grab business of a dissolved firm by some of the partners only to the exclusion of others, who are law abiding and unable to indulge in violence. It is anathema to Rule of Law. After dissolution of the firm only winding up of the business of firm has to be undertaken which does not mean continuing with day-to-day business of the firm as it was prior to dissolution. Winding up is only for the purpose of terminating the business finally and setting the accounts between the partners and distributing the assets/cash left after meeting the liabilities of dissolved firm. This is the purport of above referred provisions of Indian Partnership Act. The hijacking of the business of a dissolved firm by one of the partners and its running by him to the exclusion of others by force is sufficient to raise doubts against the bona fides of such a partner and an inference can be drawn that he intends to gobble the profits, assets as well as goodwill of the firm to the exclusion of his erstwhile partners to unduly enrich himself. It should be taken as a patent misconduct calling for Courts intervention to put an end to the highhandedness and prevent the mockery of law, justice and courts. Lindley on Partnership 14th Edition Page 425 has observed that nothing is considered as so loudly calling for interference; of the Court when there is an improper exclusion of one of the partners. This Court, therefore, is persuaded to follow the judgments in 'Vidya Devi' and Tilak Chand Jain' (supra), and is of the considered view that where the control of business is forcibly retained by one of the partners to the exclusion of others, interference of the court is essential to put an end to highhandedness and protect the interests of an ousted partner, who is knocking at the doors of Courts.

> 21. In such cases, the Receiver has to be appointed as a course. However, this course may not be followed by the Courts where the outgoing partner appears to be himself not participating in the partnership business before the dissolution of the partnership or holds only a minor share in the partnership firm or where the partners under the control of the dissolved firm are majority shareholders and appear to be bona fide trying to wind up the business and complete the commitments of the firm prior to dissolution, which are so much that the Receiver may not be in a position to fulfill the same. In such cases, the partners under the control of the dissolved firm may be permitted to continue with winding up process and day-to-day control of the business subject to appropriate terms and conditions, which adequately protect and safeguard the financial interests of the partner out of control. In such exceptional cases the Court may hold that it would not be just and convenient to appoint a Receiver."

24. From an ex-facie reading of this decision, it is clear that it supports the respondent rather than the case of the 1st claimant. This being the case, even this decision is of no assistance to the 1st claimant.

25. For all the foregoing reasons, I find that the Arbitral Tribunal was fully justified in appointing a receiver as more

particularly set out in the operative part of the impugned order. Consequently, I find no merit in this petition. It is, accordingly, dismissed. However, in the facts and circumstances of the present case, there shall be no order as to costs.

26. At this stage, the learned Counsel appearing on behalf of the 1st claimant (1st petitioner herein) has prayed that the ad-interim order granted by this Court be continued for four weeks in order to enable the petitioners to test this order before the Higher Court. This request is vehemently opposed by the learned Advocate for the respondent. Considering the findings that I have given above, there is no question of continuing the ad-interim order. I have categorically found that the respondent has been kept out of the partnership property and to which he was admittedly entitled to. This being the case, the request for continuation of the ad-interim order is refused.

(B.P. COLABAWALLA, J.)