

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CONTEMPT PETITION NO.42 OF 2019
IN
ARBITRATION PETITION NO.640 OF 2016**

Mitul Chandrkant Samani

...Petitioner

vs

Tushar Chandrakant Samani

...Respondent

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Mr. Ruchir Tolat, i/b. L.C. Tolat & Co., for the Petitioner.

Mr. Dharam Jumani, a/w. Mr. Ratnesh Dubey, i/b. Ms. Chandrika Prajapati, for the Respondent.

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CORAM : S.C. GUPTE, J.**DATED: 13 MARCH 2019****P.C.:**

. Heard learned Counsel for the parties. This contempt petition alleges breach or disobedience of a consent order passed on 27 November 2017 in an arbitration petition. By consent terms signed between the parties, the disputes and differences between the parties concerning the subject matter of the petition, and which arose out of a memorandum of family agreement dated 6 May 2017, were resolved. Respondent No.1 agreed and undertook to act in accordance with the terms of the memorandum of family arrangement and take necessary steps to comply with its terms. In particular, Respondent No.1 *inter alia* agreed and undertook to retire from the partnership firm of the Petitioners and Respondent Nos. 1 to 3 to the original arbitration petition simultaneously upon due execution and registration of

deed/documents as may be required to be executed for effective transfer of the properties and title thereof in the name of Respondent No.1. Respondent No.1 agreed and undertook to this Court to sign and execute and register all requisite documents of retirement. The grievance in the present contempt petition is that despite the other parties having taken the requisite steps in that behalf, Respondent No.1 has not so far retired from partnership. It is not in dispute that execution and registration of documents/deeds of transfer of title in favour of Respondent No.1 have not been accomplished as yet. If that is so, one cannot say that the liability on the part of Respondent No.1 to retire from the partnership firm has already accrued as of date. Learned Counsel for the Petitioner submits that the family arrangement envisages various simultaneous acts, many of which have already been accomplished and that Respondent No.1 is, therefore, bound to take steps for retirement from the partnership. In the first place, whether or not this is so is a matter of debate. Secondly, and at any rate, whatever may be the implications of the family arrangement between the parties, so far as the orders of the Court are concerned, Respondent No.1 is bound to retire from the partnership firm only upon and simultaneously with execution and registration of documents of transfer in his favour. Since that has not occurred, there is no question of his having committed any breach of the orders of the Court by refusing to retire from the partnership firm. There is, accordingly, no merit in the contempt petition. The contempt petition is dismissed.

(S.C. GUPTE, J.)