

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****Commercial Arbitration Petition (L) NO. 1238 OF 2019**

Mehfuza Wd/o. Yakoob Patrawala And Anr. ...Petitioners

Versus

Kadir Yakoob Patrawala And Ors. ...Respondents

Mr.Chirag Mody with Deepak Shukla & Jainy Rughoni i/b. Vinod Mistry & Co., for the Petitioners.

Mr.Mutahhar Khan, Abhijeet Mahadeokar with Mahesh Mahale i/b. Abhijeet Mahadeokar, for Respondent nos.1, 2 & 4.

CORAM : G.S. KULKARNI, J.

DATE : 14th October, 2019

P.C.:

1. Heard learned Counsel for the petitioners and learned Counsel for the respondents.
2. This is a petition filed under Section 9 of the Arbitration and Conciliation Act,1996 (for short 'the Act') whereby the petitioners have prayed for the following interim reliefs:-

"a. pending the hearing and final disposal of the arbitral proceedings and execution of the Award to be passed therein, this Hon'ble Court be pleased to appoint the Court Receiver, High Court Bombay as a Receiver in respect of the subject property, viz. Shop admeasuring approx. 7500 sq.ft. Carpet area and located on the ground floor of the Orchid City Center Mall, C.S.243 Tardeo Division, Belasis Road, Mumbai-400008, to safeguard the right, title and interest of the parties;

b. In the alternative to prayer clause (a) above, this Hon'ble Court be pleased to continue the appointment of Court Receiver, Hon'ble High Court, Bombay which was appointed as per Order

dated 12.03.2018 being Exhibit-'D-1' hereto and subsequently continued by Order dated 11/12.12.2018 being Exhibit-'E' hereto subsequently extended by Order dated 11.01.2019 being Exhibit-'E-1' hereto and finally it was extended by Order dated 08.02.2019 being Exhibit-'G' hereto till the hearing and final disposal of the arbitration proceedings and execution of the Award to be passed therein;

c. Expedite the hearing of the present Interim Arbitration Petition considering the Petitioner No.1's ill-health and age (82 years);"

2. In my opinion, this application is misconceived as the disputes and differences that had arisen between the parties under the partnership deed were referred for adjudication of a Sole Arbitrator. The learned Sole Arbitrator rendered an Award on 12 June 2013. The award was subject matter of challenge in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') which came to be dismissed. Thereafter an appeal under Section 37 of the Act came to be filed, that appeal is also rejected. Thereafter, the petitioner filed an Execution Application and Chamber Summons no.322 of 2019 inter alia praying for the following reliefs:-

"(a) Pending the hearing and final disposal of the Com.Execution Application (L) No.257 of 2019, this Hon'ble Court be pleased to continue the appointment of Court Receiver, High Court Bombay as a Receiver in respect of the subject property viz. Shop admeasuring approx. 7500 sq.ft. Carpet area and located on the ground floor of the Orchid City Center Mall, C.S.243 Tardeo Division, Belasis Road, Mumbai-400008 ("Subject Property") till the hearing and final disposal of the Com.Execution Application (L) No.257 of 2019.

(b) Pending the hearing and final disposal of the Com. Execution Application (L) No.257 of 2019 this Hon'ble Court be pleased to direct the Court Receiver, High Court, Bombay to appoint an Architect/Surveyor with respect to the subject property:-

(i) For the purpose of making of demarcation/partition of

the subject property in accordance with the Award dated 12.06.2013 read with 7 Agreements, all dated 22.08.2006 details of which Agreements are given in Annexure-A attached hereto and directing the Court Receiver to hand over and deliver vacant and peaceful possession to the Applicants and respondents their respective share in the same.

(ii) Upon such survey/measurement being carried out to have the physical and actual demarcation made thereon and to hand over possession of the respective premises to the Applicants and the Respondents to the extent of their share as per Award dated 12.06.2013.

(iii) The Court Receiver, High Court at Bombay do provide to the Applicant No.1 her own area as per her Agreement dated 22.08.2006 as well as 17% by way of succession after the demise of her son Yunus Yakoob Patrawala, Original Claimant No.2;

(iv) Applicants and Respondents be directed to authorize the Court Receiver, High Court Bombay to withdraw the amount lying with the Office of Ld.Prothonotary and Senior Master towards the expenses and payment of appointment of Surveyor /Architect for demarcation of the subject property.

(v) In view of the paragraph (b)(i) to (iv) above, this Hon'ble Court be pleased to modify the Order dated 12.03.2018 in the aforesaid terms;

(c) Pending the hearing and final disposal of the Com.Execution Application (L) No.257 of 2019 this Hon'ble Court be pleased to Order/direct the Commissioner for Taking Accounts, High Court, Bombay, to do the following things:-

(i) Accounts be made up for the purpose of distribution as per Award dated 12.06.2013 read with Order dated 02.07.2015;

(ii) Drawing up the final accounts with appropriate directions and/or order that the shares found due to each partner of the said firm upon winding up be paid to the said partner forthwith;

(iii) upon the accounts being made, any such parties having withdrawn excess amounts be orders and directed to deposit the excess amounts with the Ld.Prothonotary & Senior Master as per order dated 02.07.2015 and 15.07.2015;

(iv) to disburse the amount to the Applicants and Respondents as per the drawn up account of the said Firm to proportionate to their respective shares with accrued interest on the amount lying in the Office of Prothonotary & Senior Master;

(d) this Hon'ble Court be pleased to expedite the hearing of present Chamber Summons as well as Commercial Execution Application (L) No.257 of 2019 by considering the Applicant No.1's ill-health and age (80 years).

(e) Interim and Ad-interim reliefs in terms of prayer clauses (a) to (d) above;”

3. Prior thereto in Chamber Summons no.322 of 2019, the parties consented for appointment of a Court Receiver and the Court accordingly had passed an order dated 8 February 2019 which reads thus:-

“1. By consent, the Court Receiver appointed, who took possession pursuant to order dated 12th March 2018, to continue until further orders.

2. By consent, the property mentioned in prayer clause – (a) of the chamber summons be also demarcated by an Agency to be appointed by the Court Receiver and the fees and expenses of the Agency to be used from the funds available with the Prothonotary and Senior Master, High Court, Bombay.

3. This order is passed without prejudice to the rights and contentions of the parties.

4. Affidavit in reply to the chamber summons to be filed and copy served within two weeks from today. Rejoinder, if any, to be filed and copy served within one week thereafter.

5. Chamber summons to be listed for hearing on 7th March 2019. In the meanwhile, all office objections to be removed and chamber summons and execution application to be numbered.”

4. In the meantime execution proceedings had come up for consideration before this Court and Chamber summons no.322 of 2019 was taken up for hearing by this Court (R.I.Chagla, J.), wherein the prayers similar to one as made in the present petition for continuation of appointment of Court Receiver came to be made as the learned Arbitrator had not granted the prayers for demarcation/partition of the property of the partnership by metes and bounds. Learned Single Judge by an order dated 26 June 2019 rejected the said chamber summons as

moved by the petitioners.

5. The present petition is nothing but reiteration of the request rejected by the learned Single Judge by the said Chamber Summons in the execution proceedings. In the facts and circumstances of the case, the petitioners' prayer now again re-agitating the same prayers, cannot be accepted.

6. The petition is accordingly rejected. No costs.

[G.S. KULKARNI, J.]