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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION (L) NO. 1294 OF 2019**

Ashrita Moraes And Anr

...Petitioners

Versus

Dilip B Shah

...Respondent

WITH

COMM ARBITRATION PETITION NO. 374 OF 2019

WITH

COM ARBITRATION PETITION NO. 1362 OF 2019

Mr MJ Michael, *with Mr Father Manuel and Mr Chirag Sarangi, i/b Deepa Bisht, for the Petitioners in CARBPL/1294/2019 and Respondents in CARAP/374/2019 and CARBP/1362/2019.*

Mr Ashok Saraogi, *for the Respondent in CARBPL/1294/2019 & Petitioner in CARAP/1374/2019 and CARBP/1362/2019.*

CORAM: G.S. PATEL, J.

DATED: 11th November 2019

PC:-

1. Commercial Arbitration Application No. 374 of 2019 and Commercial Arbitration Petition No. 1362 of 2019 are filed by one Dilip Bhavanji Shah represented by Mr Saraogi. Arbitration Petition (L) No. 1294 of 2019 is filed by the respondents to Dilip Shah's

application and petition. They are one Ashrita Moraes and one Errol Moraes, represented by Mr Michael.

2. Mr Saraogi makes a statement on instructions that he does not press his Section 9 commercial arbitration petition No. 1362 of 2019 and seeks leave to withdraw it reserving liberty to file a later application under Section 17 if though it. Leave granted with liberty as prayed.

3. I note that Mr Saraogi's instructions are that his client will have a counter claim and his interim application, if any, will be presented, if at all, in that counter claim.

4. Commercial arbitration petition No. 1362 of 2019 is disposed of in these terms.

5. As regards the Moraes's arbitration petition, a few facts are necessary. There are two documents in question. The first is an Memorandum of Understanding ("MoU") dated 15th January 2014 from pages 21 to 24. Clause 8 is the arbitration clause and it names one Sunil Peter Vaz, a common friend as the sole arbitrator. The agreement of 15th January 2014 relates to agricultural lands in Mahabaleshwar, district Satara. These lands are noted in the recital at page 22. Dilip Shah is said to be the owner of these properties and Ashrita Moraes is described as an investor, a person known to Dilip Shah. The agreement recites that Ashrita agreed to finance Dilip Shah in the amount of Rs. 50 lakhs for four years with a promise or assured rate of return of 100% i.e. a return at Rs. 1 crore at the end of

four years ending on 19th January 2018. The properties were supposed to be security although this is described as ‘custodial security’ and the agreement prima facie contemplates a transfer of these lands to Ashrita with an agreement in Clause 4, that on payment of the assured amount she would re-transfer them to Dilip Shah.

6. The second agreement is dated 2nd June 2016. A copy is from pages 25 to 29. It is styled as a “buy-back guarantee agreement”. It is difficult to understand what precisely this is supposed to mean. This agreement deals with some agricultural lands at Karjat in District Raigad in Maharashtra, noted in the recital at page 27. Again, Dilip Shah owned these lands. The second contracting party to this later document is Errol Moraes. The agreement says that Errol agreed to invest an amount of Rs.1.25 crores for a period of three years with an assured return again of 100% i.e. of 2.5 crores at the end of that term. There is a similar provision is made in regard to the transfer and re-transfer of these lands at Karjat. The arbitration clause 9 at page 29 does not mention any individual but only says that disputes must be referred to a neutral person.

7. The petitioners in this arbitration petition resides in Goa. Dilip Shah resides in Mumbai. The lands are in Maharashtra, not in Goa.

8. It is common ground that it is the Moraes couple who are in possession of the Karjat land. Parties do not agree about the factual status of possession in regard to the lands in Mahabaleshwar.

9. The short Affidavit in Reply filed by Mr Saraogi, which is essentially his arbitration petition and arbitration application, says that despite these agreements Dilip Shah was never put in funds of the entire aggregate amount of Rs.1.75 crores. He accepts receipt of an amount of Rs. 75 lakhs, of which Rs. 50 lakhs was paid to him, Dilip Shah, and the balance Rs. 25 lakhs was paid to a third party. Whether this third-party payment was on behalf of Dilip Shah or not is a matter of dispute. The transfer from the Moraes is, however, demonstrated only to the extent of Rs. 75 lakhs. There is no written documentation of a bank transfer or cheque payment of the remaining amount of Rs. 1 crore.

10. Having regard to these circumstances, an ad-interim relief is not possible. The best course of action would be refer to all disputes between the parties for both sets of land to the sole arbitration of an Advocate of this Court. I will of course leave to open all rights and contentions of the Moraes couple for an appropriate Section 17 application.

11. Parties are agreed that in the arbitration, Ashrita Moraes and Errol Moraes will be the claimants and the Dilip Shah will be the respondent.

12. By consent, Mr Karl Shroff, learned Advocate of this Court, is hereby nominated to act as a sole arbitrator. Hence the following:

- (a) **Appointment of Arbitrator:** By consent, Mr Karl Shroff, learned Advocate of this Court, is hereby nominated to act as a Sole Arbitrator.

(b) Communication to Arbitrator of this order:

- (i) A copy of this order will be communicated to him by the Advocates for the Applicant within one week from today of the order being uploaded.
- (ii) In addition, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator within one week of the order being uploaded, at the following postal and email addresses:

Arbitrator/s Mr Karl Shroff, Advocate

Address Frenville, Jussawala Wadi, Juhu,
Mumbai 400 049

Mobile +91 98200 69915

Email karlshroff@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at

such place as he nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email id.
- (f) **Interim Application/s:** Liberty to the parties to make an interim application or interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit. The present arbitration petition by the Moraes couple will be treated and presented as an application under Section 17. The reply will be treated and presented as a reply to the Section 17 Application. Liberty to both sides to take leave of the learned Sole Arbitrator to file further affidavits.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
- (k) **Contentions kept open.** Rival contentions are kept open and will be unaffected by any observations in this order.

13. Arbitration petition (L) No. 1294 of 2019 is disposed of in these terms. Office objections to be removed within one week from today. The arbitration applications are also disposed of in these terms. No order as to costs.

(G. S. PATEL, J)