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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1192 of 2018

Rameshchandra Babubhai Kocha. ..Petitioner.
v.
Mrs. Vanita Vasudev Kocha ..Respondent.

Mr. Ashutosh Kaushik i/by Kaushik & Co. for the Petitioner.
None for the Respondent.

CORAM : B. P. COLABAWALLA, J.

DATED :- 28th February, 2019.

P.C. :

By this Arbitration Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "**the Act**"), the petitioner (the respondent before the Arbitral Tribunal) seeks to challenge the orders dated 29th August, 2018 and 3rd September, 2018 (for short the **"impugned orders"**) passed by the Arbitral Tribunal.

The subject-matter of the arbitral proceedings is the dissolution of a partnership firm in the name and style of 'M/s Babubhai

Narotamdas & Co.' The claimants are the heirs of the erstwhile partner of the said firm. The respondent is also a partner. After arbitral proceedings were initiated, in the Minutes of the Meeting held on 10th October, 2016, it was recorded that the parties had agreed that so far as the premises mentioned in Paragraph 2 of the said Minutes are concerned, upon the expiry of the period of the License or Tenancy in relation to those premises, if the respondent desired to give those premises to any third person, the same would be communicated to the claimants in writing, who then, if they were in a position to bring a better offer, would inform the respondent of the same within a fortnight of the receipt of the said communication.

Since certain premises became available, the advocate for the respondent before the Tribunal (the petitioner herein) addressed a letter dated 18th July, 2018 to the advocates for the claimants, informing them that certain premises have become available and which need to be given on a Leave and License basis for a monthly compensation of Rs.40,000/-. A copy of this letter was also addressed to the Arbitral Tribunal. The relevant portion of this letter reads thus :-

> “Pursuant to my earlier communication, it was informed that the Leave and License agreement in respect of Shop No.3 was terminated and the same will be used for operation the partnership business. My client states one Mr. Jetharam Dewasi was occupying Shop No.6 on Leave and License basis and that the term thereof is also completed. <u>My client states that the financial stress in terms of property taxes and repair cess as against the Nana Chowk property has piled upto rupees 20 Lakhs. In view thereof, my client has decided to carry on its business from Room No.9 on the 1st Floor and simultaneously offer the Shop Nos. 3 and 6 on leave and license basis to the intending Licensees at the base compensation of Rs.40,000/-per month for each of the said shops</u>. In terms of the directions contained in the Minutes of Meeting dated 10th October, 2016 passed by the Hon’ble Arbitral Tribunal your clients are requested to communicate my client with superseding offers, if any, within a fortnight from the receipt hereof by you.”

On this letter, and which the Arbitral Tribunal treated as an application, an order was passed on 29th August, 2018 (the first impugned order) under which the Tribunal allowed the respondent (the petitioner herein) to give the said premises (Shop Nos.3 & 6 as mentioned in the letter dated 18th July, 2018) on Leave and License basis for a compensation of Rs.40,000/- per month. In effect, it accepted what was stated by the respondent (the petitioner herein) in its letter dated 18th July, 2018. It is in this light that the Tribunal in paragraphs 8 and 9 stated as under:

> *“8. These amounts are to be utilised towards the payment of arrears of taxes. The parties have also*

> *agreed to pay security deposit of Rs.2,00,000/- for giving the premises for a period of 11 months, which security deposit is required to be converted into fixed deposit for a period of one year and if the same is renewed then till such time as the premises are handed over to the Respondent.*
>
> *9. The Respondent are directed to deposit the money in the firm's account to pay off the taxes and the security deposit has been deposited by the parties, however, these deposits are required to be invested in the Fixed Deposit for a period of one year to be renewed in the eleven months at the interest is to be received by the firm."*

It is mainly this part of the order that the respondent before the Tribunal (the petitioner herein) is aggrieved and has therefore approached this Court under Section 37 of the Act.

In this factual backdrop, the learned Advocate appearing on behalf of the petitioner (the respondent before the Tribunal), submitted that there was no necessity whatsoever for the Tribunal to pass any order considering what was stated in the Minutes of the Meeting dated 10th October, 2016. The learned Advocate submitted that all that was required to be done by the respondent was to inform the claimants that certain premises have become vacant and which need to be given on Leave and License basis and gave an opportunity to the claimants to bring a better offer within

14 days from the date of communication. This being the case, the Tribunal could not have directed in the impugned order how the monies received as compensation were to be used by the partnership firm.

I find absolutely no merit in this contention. When one looks at the letter dated 18th July, 2018 addressed by the Advocates for the respondent to the Advocates for the claimants, it is quite clear that it was the case of the respondent that these premises need to be given out on a Leave and License basis because there was great financial stress on the partnership firm in terms of property taxes and repair cess which had piled up to almost Rs. 20 lakhs. It is in view thereof that the respondent was intending to offer Shop Nos.3 and 6 on Leave and License basis to the intending licensees at the base compensation of Rs.40,000/- per month. What is important to note is that it is the respondent's own case that the aforesaid premises were to be given on Leave and License because there were outstanding of property taxes and repair cess. All that the Tribunal has done is that it directed that the monies received as compensation from the aforesaid Leave and License be deposited in the firm's account to pay off the taxes and that the security deposit given by the intending licensees be converted into a Fixed Deposit which would earn interest for the firm. Considering that the premises that are intended to be given on Leave and License admittedly belong to the partnership firm which is in dissolution, it is to safeguard the assets of the firm that the order has been passed by the Tribunal. In these circumstances, I do not find any perversity in the impugned order.

As far as the second order dated 3rd September, 2018 is concerned, this order was passed on an oral application made by the respondent contending that there was no question of passing any order on the application dated 18th July, 2018. The Tribunal, whilst disagreeing with this proposition recorded that it was necessary to pass an order on the letter dated 18th July, 2018 considering that it was in respect of transfer of immovable property of the firm and which was in dissolution before the Arbitral Tribunal.

Considering all that as I have already stated above, I do not think that any interference is called for in the impugned orders passed the Tribunal. Considering that the dispute between the parties before the Arbitral Tribunal is one of dissolution of a partnership firm and considering that admittedly the premises which are sought to given on Leave and License are assets of the partnership firm, the directions passed by the Tribunal are fully justified.

This being the case, I do not find any merit in the Arbitration Petition. It is accordingly dismissed. No order as to costs.

(**B. P. COLABAWALLA, J.)**