

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.173 OF 2018

Mohammed Ghalib ... Petitioner

Versus

Aysha Ansari And Ors. ... Respondents

WITH

ARBITRATION PETITION NO.184 OF 2018

AND

ARBITRATION PETITION NO.185 OF 2018

Mohammed Ghalib ... Petitioner

Versus

Mohammed Ghori Ansari And Ors. ... Respondents

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Mr. Swapnil Bangur, a/w. Mr. Amit Bhave and Mr. Vinod Sakpal, i/b. Milan Bhise & Co., for the Petitioner.

Mr. Nitin G. Raut, i/b. P. Vas & Co., for the Respondents in all three arbitration petitions.

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CORAM : S.C.GUPTE, J.

DATED : 21 AUGUST 2019

P.C.:

ARBITRATION PETITION NO.173 OF 2018

Heard learned Counsel for the parties. This arbitration petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996 (“the Act”), challenges an award passed by a sole arbitrator in the matter of disputes between the parties. The dispute arose as a result of a development agreement between the parties.

2. On 11 October 1996, an agreement in the form of a memorandum of understanding (“MOU”) was executed by and between Mohammed Akbar Ansari (since deceased), the predecessor-in-title of the Respondents, and the Petitioner. Under this agreement, the deceased Mohammed Akbar Ansari and the Petitioner agreed to jointly develop the suit property on the basis of the terms incorporated in the MOU. The MOU *inter alia* included a term requiring execution of a final agreement described as a “regular Joint Venture and/or Deed of Partnership”. Admittedly, no such final agreement was executed between the parties. The Respondents were accordingly seeking a declaration before the arbitrator that the agreement has come to an end by efflux of time and was no longer valid or binding on the Respondents. It was the Petitioner’s case in reply that the agreement was valid, subsisting and binding on the parties. The learned arbitrator in his impugned award, after construing the MOU and, in particular, clauses 3, 4 and 9 thereof, came to a conclusion that the real intention, and the object of execution, of the subject MOU was to develop the suit property; the clauses referred to above indicated that the parties had agreed to execute a further contract within a period of fifteen days from the date of the execution of the MOU as a condition or term of the bargain and that the subject MOU was an agreement to enter into an agreement and until such latter agreement was made, that too within fifteen days of the execution of the MOU, there was no finally concluded contract. The arbitrator, in the premises, held that the MOU was not valid or enforceable.

3. The impugned award of the arbitrator has been challenged in

the present petition on the ground of breach of public policy. Learned Counsel for the Petitioner is unable to point out how the impugned award can be said to be in such breach. Learned Counsel submits that the material on record indicates that the parties had taken steps even after the expiry of fifteen days after the date of execution of the MOU. It is doubtful if the documents on record, read in the light of the pleadings of the parties, do even suggest any such case. But be that as it may, this certainly is a matter of evidence and the arbitrator's view on the subject cannot be scrutinized from the point of view of an Appellate Court. So long as the view can be demonstrated as a possible view and not an impossible or perverse view, it merits no interference within the jurisdiction of the challenge Court under Section 34 of the Act.

4. Learned Counsel for the Petitioner alternatively submits that the Respondents' claim was barred by the law of limitation. No such ground appears to have been raised before the learned arbitrator. It is not permissible to raise a ground, which is not even a ground of pure law but a mixed issue of law and facts, for the first time before the challenge Court in an application under Section 34 of the Act. There is, thus, no merit even in this contention.

5. There is, accordingly, no merit in the challenge. The arbitration petition is dismissed. No order as to costs.

**ARBITRATION PETITION NO.184 OF 2018
WITH
ARBITRATION PETITION NO.185 OF 2018**

6. It is not disputed by the parties that the issues involved in these two petitions are the same as those that arise in the companion petition disposed of in terms of the order above. The disputes between the parties in these two petitions arise out of memoranda of understanding between the parties, which are on the same terms and conditions, as contained in the MOU involved in the companion petition decided above except that they relate to different properties and involve different amounts. The arguments of the parties are on the same lines as in the case of the companion arbitration petition. The arbitration awards challenged in these two petitions have also been rendered on the same lines and after considering the same issues. For the reasons stated above, these arbitration petitions are disposed of in terms of the same order as in the case of Arbitration Petition No.173 of 2018. The arbitration petitions are dismissed accordingly. No order as to costs.

(S.C.GUPTE, J.)