

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 2847 OF 2020
IN**

COMM ARBITRATION PETITION (L) NO. 326 OF 2020

Sunny Mukesh Ramani ...Petitioner

Versus

Rajesh Gaurishankar Sharma & Ors ...Respondents

AND

COMM ARBITRATION PETITION (L) NO. 296 OF 2020

Rajesh G Sharma & Ors ...Petitioners

Versus

Uma Construction & Anr ...Respondents

AND

ARBITRATION APPLICATION NO. 119 OF 2020

Rajesh G Sharma & Ors ...Petitioners

Versus

Uma Construction & Anr ...Respondents

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**Dr Birendra Saraf, Senior Advocate, with Naira Jeejeebhoy, i/b
Nitin Parkhe, for the Applicant/Petitioner in CARBPL-
326/2020 & for Respondent No. 2 in CARBPL-296/2020.**

**Mr Kevic Setalvad, Senior Advocate, with Irfan Unwala, Darshit
Jain, & Aman Dhruva, i/b AID Legal, for the Petitioner in**

*CARBPL0296/2020. & ARBAP-119/2020 & for Respondents
Nos. 1, 2, 4 and 5 in CARBPL-326/2020.
Ms Naira Jeejeebhoy, i/b Nitin Parkhe, for Respondent No. 2 in
ARBAP/119-2020.*

CORAM: G.S. PATEL, J
(Through Video Conference)
DATED: 6th November 2020

PC:-

1. Heard through video conferencing.
2. These matters have been pending before me for a very long time. The disputes are in relation to a partnership firm called Uma Construction.
3. First, a description of the matters that are before me. Commercial Arbitration Petition (L) No. 326 of 2020 is filed by Sunny Mukesh Ramani (“**the Ramani’s Section 9 Petition**”). The Respondents to that include Rajesh Sharma, his brother, Sunil alias Baldev Sharma, the firm of Uma Constructions, and, latterly joined, Rajesh and Sunil’s spouses. The brothers Sharma (and some others) have filed their own Commercial Arbitration Petition (L) No. 296 of 2020 under Section 9 (“**the Sharmas’ Section 9 Petition**”). To this, the partnership firm itself Uma Construction is the 1st Respondent and Ramani is the 2nd Respondent. The brothers Sharmas have also filed Arbitration Application No. 119 of 2020 (“**the Sharmas’ Section 11 Application**”) against Uma Constructions and Ramani.

4. All these matters relate to a building called Hamrahi yet under construction at 15th Road, Khar Pali Road, Khar (West), Mumbai 400 052 on Plot No. 608 of TPS-III, Bandra, CTS No. F/68. The Plot is about 664.7 sq mtrs.

5. To put the matter into some historical context it appears that there was an earlier structure on this plot. Some of the documents in the structure were in the occupation and possession of tenants.

6. Ramani was not originally a partner of Uma Construction. The original partnership was between Rajesh Sharma and one Chugani. There is no dispute that Chugani exited the firm. Ramani and Sunil were inducted into the firm. Sunny Ramani had 50% in the profits and losses of Uma Constructions. Rajesh and Sunil had 25% each. This was achieved by a Deed of Admission, Retirement and Continuation of Partnership dated 5th February 2013. There is no dispute that the Deed of Admission, Retirement and Continuation of Partnership dated 5th February 2013 does have an arbitration agreement in clause 19. This requires a reference to be made to a sole Arbitrator. The arbitration is to be in Mumbai.

7. As far as I can tell, this is about the only thing on which these warring parties agree today. Since disputes began they have been at daggers drawn, sometimes in the most unacceptable manner. There have been police complaints, altercations on site, recordings of telephonic conversations and so on. While I will make an order in respect of several assets of Uma Construction and will make provisions for each of these, as also appoint an Arbitrator, I do require

both sides to conduct themselves with the utmost restraint from now until the conclusion of the arbitration proceedings. I do not *request* the cooperation of both sides. I insist on it. If, while arbitration for civil disputes are going on in one forum, the parties in parallel start launching criminal proceedings, this will only make it very nearly impossible to bring any arbitration to a close.

8. There are eight units in the building. I will make an order in respect of each of these below. I do note however that the building is not yet complete. An occupation certificate is not received and, therefore, possession — whether to the two sides in question or to any third party flat purchasers — cannot be given. This order is not to be read as an injunction against the firm or any of its partners from pursuing the occupation certificate application or other necessary applications before the Municipal Authorities.

9. The old building followed a certain system or sequence of numbering flats: 1, 2, 3, 4 etc. On reconstruction, this numbering system was changed and there appears to be no exact numerical equivalence between the old flat numbers and the new flat numbers. For example, original flat No. 7 is now admittedly flat No. 102. In this order, therefore, I will be referring to the flats in question by their newly assigned numbers.

10. The eight flats in question are flat Nos. 1301, 601, 201, 102, 202, 802, 1001 and 1002.

RE: FLAT NO. 1301

11. It is common ground that this flat is or was an asset of the partnership firm. The Sharmas claim that they have acquired rights to this flat jointly with their wives (Respondents Nos. 4 and 5 in the Ramani's Section 9 Petition). Mr Setalvad has written instructions to make a statement on behalf of the two Sharma brothers and their wives that no third party rights will be created for a period of two weeks from today in respect of flat No. 1301.

12. The Sharmas are in error if they believe that the Court is constrained or bound by their statement. It may suffice as an undertaking to a Court but it certainly does not bind the hands of the Court. Further, there is no question of the Sharmas dictating either to the Court or the arbitral Tribunal for what period of time they (and their wives) will stay their hands in the matter of creating third party rights. There will be no creation of third party rights by the Sharma brothers or their wives not only for a period of two weeks from today but until there is an appropriate decision of the arbitral tribunal.

13. As regards the joinder of the spouses of the Sharma brothers as parties to the arbitration itself in regard to Flat No 1301, I will leave all contentions open both as to joinder and arbitrability. However, admittedly, it is the two Sharmas as partners of the firm who claim to have created rights in respect of their respective wives in respect of this flat. An arbitral relief cannot be rendered nugatory or still-born simply by creating third party rights in favour of family members before the arbitration even commences. This is a factor that the

learned sole Arbitrator will bear in mind as he proceeds in regard to flat No. 1301.

14. If Ramani is unable to get effective arbitral reliefs in respect of Respondents Nos. 4 and 5 (the Sharma wives) in his Section 17 Application in regard to Flat No. 1301, then obviously Ramani will have liberty to adopt appropriate proceedings.

RE: FLAT NO. 601

15. This flat is covered by an order dated 24th July 2020. That order will continue until a decision on the Section 17 Application by the learned sole Arbitrator to be appointed.

RE: FLAT NO. 201

16. This flat has two co-sharers: 50% of it is in the name of the 3rd Respondent partnership firm, Uma Constructions. The balance 50% is in the name of one Mr Nagpal, said to be the original tenant/occupant and a subsequent purchaser. Obviously, the firm and its partners will not be permitted to deal with this 50% title of the partnership firm until further orders of the arbitral tribunal. So ordered.

RE: FLAT NOS. 102 & 202

17. Flat No. 202 was originally flat No. 2 in the old building. Flat No. 102 was originally flat No. 7. The two apparently always formed

a singled duplex flat and in the reconstructed building this continues to be so. Ms Jeejeebhoy on behalf of Ramani claims that the documents prima facie indicate that this is indeed an asset of the partnership firm.

18. There are at least three different documents that relate to these two flats. In addition, there is a litigation by a third party.

19. One document is said to be of 1st April 2011. There is some dispute about the date because the stamp paper is of 6th May 2011. The document in question, whatever be the date, was made between the Sharmas and Ramani. On the last page there is a handwritten endorsement of confirmation that flat Nos. 12, 7 and 2 (the old numbers) are owned by Rajesh Sharma and family. Both sides dispute this document. Sunny Ramani, as I understand it, says that this was obtained by misrepresentation. I believe the Sharmas have also impeached the document. The contentions in regard to that document evidently must be kept open for a decision at a later date.

20. There is then a Deed of Exchange of 11th September 2018. This is between the third party purchasers, the Hinduja's, and Uma Construction. The Hinduja's had purchased flat No. 202. It was then found that this was part of a duplex. The Hinduja's wanted to swap their purchased flat No. 202 with flat No. 701. That dispute came to Court. The swap took place.

21. Today the Sharmas claim that both flat Nos. 102 and 202 belong to one or the other of them and are not assets of the

partnership firm. It is difficult to see with any clarity or certainty whether this is in fact true in view of some of these documents that have been executed between the parties. To arrive at a determination will require a closer examination not only of the documents but also of the intervening transactions.

22. Consequently, so far as these two flats are concerned, there will have to be an order restraining any of the parties, i.e. the firm itself, the Ramani as also the Sharmas from creating any third party rights in respect of flat Nos. 102 and 202 whether as a duplex or individually until further orders of the arbitral tribunal.

RE: FLAT NOS. 802, 1001 AND 1002

23. One of the areas of dispute that remains unresolved is this. According to the Sharmas, Ramani was to bring in a contribution as a partner of the firm. Ramani claims to have sold these three flats to some relatives. The Sharmas contend that the sale proceeds of the three flats cannot be substituted for his contribution in his capacity as a partner. Whatever be the rival contentions in regard to this aspect of the matter, i.e. the contribution or the set off, if any or any adjustment, all the rival contentions are expressly left open for decision of an arbitral tribunal at an appropriate stage. Ramani claims that the sale proceeds have been brought into the partnership firm. The Sharmas' contention is that the sale proceeds of the flat cannot simultaneously be both the partner's contribution and the sale proceeds of the flat. According to them, it is one or the other. If the amount received is to be Ramani's partner contribution then there is

simply no sale consideration for these three flats and they must revert to be the assets of the partnership firm. If, on the other hand, the amount received is the sale consideration for these three flats then Ramani has not made the requisite contribution as a partner of the firm and those contentions must be left open for the necessary consequences in law. For his part, Sunny Ramani contests and disputes this formulation entirely and maintains that the flats were validly sold and that there is no default on his part in making a contribution as a partner of the Uma Construction firm.

24. Given this conspectus the three flats will necessarily have to be preserved in status quo pending an arbitral decision under Section 17; while at the same time ensuring that the rights of third parties are not affected. These third party purchasers have their own litigations in respect of these three flats. The Sharmas and the Ramani are parties to those litigations. No order should be passed here or by the arbitral tribunal that will in the slightest have the effect of adversely affecting the rights or contentions of those third party purchasers.

25. Consequently, there cannot be an order in respect of these three flats *vis-à-vis* the third party flat purchasers. However, the firm itself, as also Ramani and the Sharmas are not to create any third party rights in respect of any of the three flats in any manner without prior leave of the Court before which those third party matters are pending.

26. This order cannot be read to be in derogation of any orders obtained by the third party flat purchasers or any orders passed in the litigations filed by those third party flat purchasers.

APPOINTMENT OF ARBITRATOR

27. There is a suggestion to appoint Mr Rahul Narichania, learned Senior Advocate of this Court as the sole Arbitrator. The suggestion must be accepted. I, therefore, appoint Mr Rahul Narichania, learned Senior Advocate of this Court as the sole Arbitrator to decide the disputes and differences between the parties arising from the Deed of Admission, Retirement and Continuation of Partnership dated 5th February 2013.

28. I am making it clear that the two Section 9 Petitions with all their compilations will be treated as Section 17 Applications before the learned sole Arbitrator. I can only request the learned sole Arbitrator to endeavour to dispose of these Section 17 Applications at his earliest convenience but he should under no circumstances feel himself bound by any timeline the Sharmas seek to impose.

29. I am also making it clear that it is open to the Arbitrator even if presented with a single Section 17 Application by each side, i.e. the present Section 9 matters, to make separate interim orders for each flat or for each set of flats. In other words, the learned sole Arbitrator is not required or bound to make one consolidated order dealing with every aspect of the dispute or every single flat in question. That is entirely within the discretion of the learned sole Arbitrator.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr Rahul Narichania, learned Senior Advocate of this Court, is hereby

nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Deed of Admission, Retirement and Continuation of Partnership dated 5th February 2013.

(b) Communication to Arbitrator of this order:

- (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.
- (ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s **Mr Rahul Narichania,**
Senior Advocate

Address 110, Yusuf Building,
1st Floor, MG Road,
Flora Fountain, Fort,
Mumbai 400 001

Mobile +91 98200 64410
022-2281 4350

Email rahul.narichania@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioners will arrange to file the original statement in the Registry. If the statement is

forwarded in soft copy, a print out of the covering email is also to be filed in the registry.

- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator 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. The information is to include functional email addresses and mobile numbers.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) 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.
 - (ii) Both Petitions under Section 9 of the Arbitration Act will be treated, heard, and

disposed of as applications under Section 17 of the Act. All affidavits filed in the Section 9 petitions will be treated as affidavits filed in the Section 17 applications. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.

- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **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 in the first instance.
- (j) **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.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

30. The two Section 9 Petitions and the Application are all disposed of in these terms. No costs.

31. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)