

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 784 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Prashant Dinesh Thakkar & Ors	...Petitioners
<i>Versus</i>	
Mathuradas Madhavji Thakkar & Ors	...Respondents

Mr Ruju R Thakker, *for the Petitioners.*
Ms Namrata S Bobade, *for Respondents Nos. 5 to 8.*

CORAM: G.S. PATEL, J.
DATED: 21st January 2020

PC:-

1. While there is an order already made on Notice of Motion No. 1562 of 2019 and there is Interim Application No. 1 of 2019, the following order by consent is in Section 34 Petition itself. In any case, the only prayer in the Interim Application is for an expedited hearing of the Section 34 Petition. That prayer more or less grants itself since I am disposing of the 34 Petition immediately in the following manner.

2. By consent, the impugned Award dated 17th April 2018, Exhibit “A” to the Petition is set aside.

3. Between them, the parties agree that there is in fact an arbitration agreement which is undated but a copy of which is at pages 104 to 107 of the Affidavit in Reply. This contains the provision for reference of all disputes between the parties to a sole Arbitrator. He was named in that agreement and he rendered the Award in question. One of the parties Harsh Dhruvkumar Tanna is overseas in the USA. His agreement is also noted in this Arbitration Petition.

4. In view of the consent of the parties and their joint request that the Court should exercise the powers under Section 11 of the Arbitration and Conciliation Act 1996, I am to nominate a sole Arbitrator. I propose the name of Mr Atul Desai of M/s GP Kapadia & Co, a firm of Chartered Accountants.

5. The reason for the appointment of Mr Atul Desai is because between the parties involved in this dispute there appears to be at least one partnership firm, one HUF and a large number of properties with differential shares of different members in each. This will have to be assessed and valued. There is, in response to my specific question, no agreement as to which party has what share in any particular property. There is also the question of taking and drawing up of accounts in the partnership firm. I have no manner of doubt that the learned sole Arbitrator will also have to look into the accounts of the HUF and its relationship with the partnership firm.

6. The overall objective and understanding between the parties agreed on both sides is to effectuate as quickly as possible a partition, division and distribution among eight brothers of the assets of the individuals, the HUF and the firm.

(a) **Appointment of Arbitrator:** Mr Atul Desai of M/s. GP Kapadia & Co, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(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) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator	Mr. Atul Desai of M/s. G. P. Kapadia & Co
<i>Address</i>	Hamam House Ambalal Doshi Marg, Fort Mumbai 400 001
<i>Contact details:</i>	Tel: 2265 4239 Mobile: +91 98204 36459

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward the necessary 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 before entering upon the reference to arbitration. That statement will be retained by the Prothonotary & Senior Master 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 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 within one week of this order being uploaded. The information is to include a valid and functional email address.
- (a) **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.

- (ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (f) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
 - (g) **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.
 - (h) **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.
 - (i) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
7. All rights and contentions of are kept open.
8. The Petition is disposed of in these terms. No costs.

(G. S. PATEL, J)