

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 1360 OF 2019

Avnesh Kaur Matharoo Widow of Kamaljeetsingh ...Petitioners
R Matharoo & Ors

Versus

Amarpreetsingh Rajindersingh Matharoo & Ors ...Respondents

Mr Deepak Shukla, *i/b BN Shukla & Co., for the Petitioners.*
Mr Indravadan Buddhadev, *for Respondents Nos. 1 and 2.*
Mr Anil P Bagwe, *for Respondent No. 3.*

CORAM: G.S. PATEL, J.
DATED: 17th January 2020

PC:-

1. This is further to the order dated 13th December 2019. It is best to reproduce paragraphs 1 to 9 of that order. They read thus:

“1. The Petitioner No. 1 is the 50 years was the widow of one Kamaljitsingh Rajindersingh Matharoo. The 2nd Petitioner is their 19-year-old son and the 3rd Petitioner is their 18-year-old daughter. Kamaljitsingh died on 28th October 2018.

2. During his lifetime, he was a partner with Respondents Nos. 1 and 2 in a partnership firm called Perfect Systems (India).

3. The present disputes are between the Petitioners as the heirs of Kamaljitsingh and his partners under the Deed of Partnership dated 6th November 1997. This Deed of Partnership contains an arbitration clause 21 at page 41, which reads thus:

“21. Any dispute arising between the Parties hereto as to the interpretation of these presents, or as to the meaning of any of the clauses of these presents or as to the meaning of any of the clauses of these presents or as the manner or conduct of the said business or as to any of the matter or thing pertaining to Partnership, its assets or as to any matter relating to the said Partnership the same shall be referred to the arbitration of a sole arbitrator, if one could be appointed, or to the Arbitrators each party to appoint one Arbitrator, and the event of the Arbitrators being equally divided, an umpire shall be elected and the award of the majority shall be binding on the parties hereto, The Arbitration proceeding shall be governed by the India Arbitration Act, 1940 with its statutory modification then in force.”

4. During his lifetime, Kamaljitsingh took two personal housing loans from the 3rd Respondent, the Bharat Cooperative Bank Mumbai Limited. Loan No. 000832500001164 was for Rs. 8.8 lakhs and the second loan No. 000833310067555 was for an amount of Rs. 16.30 lakhs. Both loans were secured by a mortgage of Kamaljitsingh's flat No. A/302, Building No. 1 Akshat CHSL, Prem nagar, Near Srushti Complex, St Paul High School, Mira Road East, Thane 401 107. Simultaneously Kamaljitsingh also offered this very flat as security and collateral for three

business loans taken by the partnership. The details of these business loans are set out at pages 14 and 15.

5. As of the date of the Petition, the aggregate amount claimed by the Bank for the business loans is Rs. 37,19,400.54 according to the Petitioner although the Bank claim may be somewhat higher. In the Petition, the bank is also said to have a claim of Rs. 19,86,150.42 as of 11th November 2019 in regard to the personal housing loans.

6. This amount under the housing loan obviously includes interest computed at a much higher rate and compounded. At my request, the learned Advocate for the Bank, Mr Bagwe, whose officer Mr Ashwin Poojari is present has recomputed the amount due under the two housing loans with interest at 8% per annum. This computation is taken on record and marked "B1" for identification with today's date. The aggregate amount under the two loans comes to Rs. 19,73,615/- up to 11th December 2019.

7. The 1st Petitioner is present in Court. She states that she will make payment to the Bank and clear this entire personal loan liability by 15th January 2020. The only reason for the delay is that some of her funds are in fixed deposit. She agrees that she will pay the additional interest at this rate of 8% per annum up to 15th January 2020 or the date of earlier payment. On that condition, I will grant an ad-interim relief in terms of prayer clause (a)(ii), which reads thus:

“(a) pending the hearing and final disposal of the arbitral proceedings and execution of the Award to be passed therein, this Hon’ble Court be pleased to:

(ii) direct the Respondent No. 3 not to take any coercive steps with respect to Flat being Flat No. A/

302, Building No. 2, Akshat Cooperative Housing Society Ltd, Prem Nagar, Near Shruti Complex, Saint Paul High School, Mira Road (E), Thane 401 107.”

8. There is an Affidavit in Reply from the Respondents. It is to be filed in the Registry.

9. The Petitioners have not yet invoked arbitration. They agree and undertake to do so by the end of January 2020.”

2. Mr Shukla now confirms that the personal loans taken by Kamaljeet Singh from the 3rd Respondent has been cleared. This is confirmed by Mr Bagwe who is present for Respondent No. 3.

3. Mr Bagwe states that the Petitioners’ residential flat was security also for the repayment of the business loan that Kamaljeet Singh took on behalf of the firm. He also says that Kamaljeet Singh along with Respondents Nos. 1 and 2 was jointly a guarantor and, therefore, the 3rd Respondent would have recourse against the heirs of Kamaljeet Singh at least to the extent of the estate that has come into his hands. While this may be correct, I cannot lose sight of the fact that the Petitioners are the widow and 19 and 18 year old son and daughter of the late Kamaljeet Singh and the 1st petitioner. I do not want this recently bereaved family to be put in even greater distress. Petitioners Nos. 2 and 3 are very young and they are yet students. This is no way to start a life in adulthood.

4. I will, therefore, restrain the Bharat Cooperative Bank, Respondent No. 3, pending the arbitration from proceeding against

the Petitioners or against their residential flat for recovery of the business loan.

5. There is no such restraint against the 3rd Respondent Bank as regards Respondents Nos. 1 and 2. The Bank is free to proceed against Respondents Nos. 1 and 2.

6. It is clarified lastly that the obligations of Respondents Nos. 1 and 2 to continue to pay the instalments of repayment of business loans due to the 3rd Respondent are to continue.

7. Between them, the Petitioners and Respondents Nos. 1 and 2 agree that the disputes and differences between the parties under the Partnership Deed dated 6th November 1987 be referred to the sole arbitration of a person to be nominated by this Court.

8. The arbitration is between the Petitioners and Respondents Nos. 1 and 2 only. Mr Buddhadev, learned Advocate for Respondents Nos. 1 and 2 accepts this position.

9. Mr Buddhadev requests that the bank should give Respondents Nos. 1 and 2 some time until March 2020 to pay any accumulated arrears. Mr Bagwe for Respondent No. 3 will not have instructions to make a statement to this effect. I will, therefore, direct the Respondent No. 3 not to proceed against Respondents Nos. 1 and 2 until 15th April 2020. This is on the footing that by 15th April 2020, Respondents Nos. 1 and 2 will clear all previous arrears of amounts due to the 3rd Respondent Bank.

10. I request Ms Megha Chandra, an Advocate of this Court, to accept the nomination to decide the disputes and differences between the parties under Partnership Deed dated 6th November 1987.

(a) **Appointment of Arbitrator:** By consent, Ms Megha Chandra, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Partnership Deed dated 6th November 1987.

(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/s Ms Megha Chandra, Advocate.

Address 51-52, 6, Shanti Building, Banaji Street, Fort,
Mumbai 400 002

Mobile 93725 90230

Email megha.chandra88@gmail.com

- (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.
- (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) Liberty to Mr Shukla to file a fresh Section 17 Application inter alia for prayer clauses (a)(iii) and (a)(iv) of the present Petition before the learned sole Arbitrator.
- (iii) The orders noted above will continue pending the Arbitration and until a final order is made thereon.
- (iv) 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 in equal one-third shares by (i) the Petitioners; (ii)

Respondent No.1 and (iii) Respondent No.2. Subject to the learned Sole Arbitrator's consent, parties are free to agree in writing upon a schedule of fees lower than that prescribed in the Rules. The learned Sole Arbitrator is not bound to accept such lower fees.

- (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.
- (l) All contentions are left open including as to the discharge of the respective liabilities in the partnership.

11. The Petition is disposed of in these terms. No costs.

(G. S. PATEL, J)