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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 1441 OF 2019**

Bilkish Mohammed Umar Khatri & Ors	...Petitioners
<i>Versus</i>	
Sarabjit Singh Arora & Ors	...Respondents

Mr Abhijeet Sadikale, *with Atharva Sawant i/b VS Bhadkamkar, for the Petitioners.*

Mr Prathamesh Kamath, *with Ms Sarika Mehra i/b LJ Law, for the Respondents.*

CORAM: G.S. PATEL, J.
DATED: 31st January 2020

PC:-

1. The Petition is under Section 29-A of the Arbitration and Conciliation Act 1996. I am dismissing it outright. The reasons are these.

2. The original Petitioner was one Mohammed Umar Abdul Gafoor Khatri. There was a partnership dispute between him and one Kartar Singh Arora. Khatri and Arora were in a partnership under a Deed of Partnership dated 14th August 1984. Arora died on 12th December 2016. The partnership business was running the

Sheetal Restaurant & Bar at Khar. Khatri filed an Arbitration Application No. 129 of 2017 under Section 11 and Arbitration Petition No. 440 of 2017 under Section 9 against Arora's heirs. By an order of 19th January 2018, both were disposed inter alia appointing Mr Nimay Dave, an Advocate of this Court, as a sole arbitrator to decide the partnership disputes and differences between the parties.

3. Mr Dave entered upon the reference to his arbitration. From the narrative in the Petition, I can see no reason whatever to fault him on his conduct of the arbitration. Before him was a Section 17 Application. He was hearing this. The matter remained at this stage until 26th September 2018 when Khatri died. There is also a statement in paragraph 21 that between April and September 2018 Khatri was too unwell to attend to either his business or to the arbitration. It is for this reason there was a hiatus in the arbitration proceedings.

4. What is interesting in this petition is not what is said so much as what is not said. There is no explanation at all why from the date of Khatri's demise on 26th September 2018 all the way until the end of the initial 12-month arbitral mandate on 18th January 2019, no application was made to implead Khatri's heirs and legal representatives.

5. The present petition was filed on 13th November 2019. I am told that the delay between 18th January 2019 and 13th November 2019 was because these heirs were being explained what the

arbitration was and because there were certain “personal difficulties” faced by these heirs. That may be true but it is unfortunate both in the manner in which it is stated in petition and in its consequences. What is really being sought today, on 31st January 2020, is that I should extend the arbitral mandate not by a few months but what is, for all intents and purposes, a period of two years i.e. from 18th January 2019 until some date at the end of 2020 or even at the end of January 2021. I find that very hard to accept particularly in the absence of any explanation whatsoever for these two intervening periods i.e. 26th September 2018 to 18th January 2019 and from 19th January 2019 to 13th November 2019.

6. As to the question of the Respondents having agreed to a six-month extension, that is wholly immaterial and will not in any way assist. Obviously no such consent could have had any effect simply because the Petitioners had not within the time available to them done what was required to be done i.e. to implead themselves as the heirs and legal representatives. The Respondents’ consent to an extension does not explain the Petitioners’ inaction.

7. Then there is a submission attempted that a settlement failed, and this was noted for the first time in the learned arbitrator’s minutes of February 2019. The minutes do not show that the settlement failed *on that day*. They merely record that the settlement had failed. In fact, it is illogical to say that the settlement failed in any discussion between the Respondents and the Khatri’s heirs in February 2019. Obviously, those settlement discussions were with Khatri and not with his heirs and therefore they must have failed

much earlier. In my reading of it, they probably failed some time prior to April 2018 because from April 2018 on the Applicants' own showing Khatri was entirely unavailable until his demise on 26th September 2018. There is in fact nothing to show that Khatri's heirs ever engaged in any discussion with the Respondents from September 2018 onwards. They were certainly not concerned with any settlement prior to that time because Khatri was very much alive.

8. There is no substance to the Petition. It is dismissed.

(G. S. PATEL, J)