

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 608 OF 2019**

Dr. Dhiren Lalit Shah & Ors.	..Petitioners
Vs.	
Sandeep & Company & Ors.	..Respondents

Mr. Karl Tamboly with Mr. Ish Jain and Mr. Puj Jain i/b. Kiran Jain & Co.
for Petitioners.

Ms. Pooja Kane for Respondent Nos.1 to 5.

Mr. Shikur Kudle for Respondent No.6.

Mr. Sanmish Gala i/b. M/s. Markand Gandhi & Co. for Respondent
Nos.7 and 8.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 10, 2022.

PC.:

1. I have heard learned counsel for the parties on this petition which is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") which challenges an order dated 11 January, 2019 passed by the learned sole arbitrator on an application filed by the petitioners under Section 17 of the Act. The disputes and differences between the parties have arisen under a Deed of Partnership dated 11 September, 1978.

2. The petitioners' father Mr. Lalit Shah was one of the partners who expired in 1994, disputes had arisen in respect of the share of the said deceased partner. Initially a civil suit being suit No.3092 of 2008 was filed by Mrs.Sushila Lalit Shah, wife of Mr. Lalit Shah for administration of the estate of her deceased husband in this Court, but Mrs. Sushila Shah expired on 12 February, 2013 and upon her death, the petitioners moved a chamber summons bearing No.313 of 2013 for transposing

themselves as party plaintiffs in the said suit. However, the chamber summons came to be rejected by an order dated 25 July, 2013, the petitioners filed an appeal bearing No.458 of 2013 challenging the order passed on the chamber summons. The said appeal came to be disposed of in terms of the consent terms dated 27 November, 2013. The parties had agreed that the disputes and differences between the parties that had arisen under the Deed of Partnership, be referred to arbitration and the learned sole arbitrator came to be appointed, who has passed the impugned order on the Section 17 application as filed by the petitioners/claimants. By virtue of the impugned order, prayer clause (a) of the application as filed by the petitioners has been allowed which reads thus:-

“(a) That pending the hearing and final disposal of the above Arbitration reference the Respondents be ordered and directed to produce accounts of the Respondent no.1 firm giving details of the amounts received for granting consent for transfer of tenancies in the immovable property of the Respondent no.1 firm and rents received from the tenants on the said property described at Exhibit “A” hereto and profits and income made therefrom.”

3. The second prayer being prayer clause (b) came to be rejected which was for a relief of a permanent order and injunction directing the respondents/the other partners in any manner selling, transferring, conveying or encumbering or parting with possession of or alienating or creating any right, title or interest in respect of any of the assets of respondent no.1 including the immovable property.

4. On such backdrop, I have heard Mr. Ish Jain, learned counsel for the petitioners, Ms. Kane, learned counsel for respondent nos.1 to 5, Mr. Kudle, learned counsel for respondent no.6 and Mr. Gala, learned counsel for respondent nos.7 and 8.

5. Ms. Kane in all fairness makes a statement that her clients would not be averse to make a disclosure in terms of what has been prayed for in prayer Clause (a) of the section 17 application in regard to the assets of the partnership firm, and the details in that regard from the date of the death of the deceased partner Mr. Lalit Shah till the date of the consent terms as entered between the parties before the Appeal Court on 27 November, 2013, to be furnished by her clients to the petitioner. Learned counsel for the petitioners also in all fairness has accepted such statement being made by Ms. Kane which according to him, would suffice the requirements of his clients. Let the respondent no. 1 to 5 accordingly disclose such details. It is however observed that such disclosure which would be made by respondent nos.1 to 5 shall be without prejudice to their rights and contentions. Ordered accordingly. As also all contentions of the parties including that of respondent nos.6, 7 and 8 are expressly kept open to be agitated in the arbitral proceedings.

6. In view of the above consensus, further adjudication of this petition is not called for leaving the parties to agitate their respective contentions in the arbitral proceedings.

7. At this stage, Ms. Kane informs that the learned sole arbitrator, who has passed the impugned order, has resigned on 03 October, 2019 and as on date there is no pending arbitral proceeding. It is so recorded.

[G.S. KULKARNI, J.]