IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.732 OF 2021

Nainsukh M. Gandhi (Receiver) .. Petitioner
Versus
Natarwarlal Chandulal Shah and others .. Respondents.

Mr. Sanket S. Kulkarni, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 20, 2023.

PER COURT :

1. The challenge in the petition is to the order dated 19th February, 2020 passed in Arbitration Proceeding No.1 of 2020 only to the extent of Clause 4 and 5 of the operative part of the impugned order which reads as under:

> *"4) In addition to the remuneration already received to Shri Gandhi, the parties shall pay more Rs.15000/- each to Shri. Gandhi totalling to Rs.90,000/- on the next date.*
>
> *5) Shri. Gandhi has agreed to withdraw/not press the application in the District Court, Jalna filed by him claiming remuneration."*

2. The facts of the case are that dispute arose between the partners, who are the respondents and partners of the registered firm M/s.Shah Himmatlal Manilal and Co. Arbitration Application No.9 of

2005 was filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”), in which sole-Arbitrator came to be appointed. The sole-Arbitrator by order dated 10th October, 2006 took a decision to appoint a Receiver for winding up of the partnership firm and appointed the petitioner, who is a Tax Practitioner by profession and has more than 50 years practice to his credit. This appointment was by an order dated 11th April, 2007 wherein the duties of the petitioner were set out. It was also stated in the order of 11th April, 2007, that the remuneration shall be fixed after the hearing of the parties and the Receiver. By communication dated 21st May, 2007, the petitioner was intimated that the remuneration is fixed at Rs.20,000/- p.m. and payment of actual expenses incurred in carrying out the work will be made. The petitioner carried out his duties and submitted his periodical report to the Arbitrator. The preliminary award came to be passed on 3rd December, 2010, which was challenged by the respondents in Appeal under Section 34 of the Act, which came to be dismissed by judgment and order dated 20th November, 2017. During the pendency, the sole-Arbitrator recused himself and considering the position, the petitioner by notice dated 7th April, 2014 requested the respondents to make the payment of remuneration as agreed for. It was also stated that since the appointment, the receiver has not been paid remuneration. By the said notice, the respondents were called upon to pay the amount due upto the period ending 31st March, 2014 aggregating to Rs.13,37,793/- and other expenses which were incurred at actual. As the sole-Arbitrator recused himself, the respondents sought substitution of the arbitrator.

3. In the Arbitration Application No.9 of 2005 seeking substitution of the Arbitrator, petitioner filed civil application bearing No.8541 of 2014 seeking a direction to the respondents to pay the petitioner's remuneration, which came to be withdrawn by the petitioner with liberty to file appropriate proceedings before the appropriate Court, which came to be allowed by this Court by order dated 12th March, 2015. Misc. Civil Application came to be filed by the petitioner before the learned Principal District Judge, bearing Misc. Civil Application No.79 of 2015 seeking direction to the respondents to pay the remuneration due and payable. This application was filed under the provisions of Section 42 of the Act. In the meantime, this Court was pleased to appoint a new Arbitrator in place of the erstwhile Arbitrator and in the meeting dated 1st February, 2020, the petitioners sought discharge from the responsibility of acting as Receiver. Along with application a detailed report was presented by the petitioner setting out the summary of the remuneration which were not paid till the January 2020 aggregating Rs.27,37,793/-. By order dated 19th February, 2020 passed in arbitration proceedings, the sole-Arbitrator directed the respondents to pay Rs.15,000/- each to totalling to Rs.90,000/- by the next date and also recorded that the

petitioner has agreed to withdraw/not press the application in the District Court by him calming remuneration.

4. Heard Mr. Sanket Kulkarni, learned counsel for the petitioner.

5. Learned counsel appearing for the petitioner submits that the clause 4 and 5 of the operative part of the impugned order is contrary to the communication dated 21st May, 2007, wherein the remuneration was fixed at Rs.20,000/- in addition to the actual expenses incurred. He would further submit that after having carried out the work, the remuneration could not be remitted to Rs.15,000/- to totalling to Rs.90,000/-, as stated in the impugned order. He would further submit that it appears that sole-Arbitrator has misinterpreted the earlier order and has assumed that the petitioner has received the past remuneration. He would further submit that the petitioner is aggrievedly prejudiced by the impugned order which is erroneously reflected the consent of the petitioner to withdraw the proceeding which he has filed before the District Court.

6. The present proceeding arising out of order passed in arbitration proceedings. Upon a query posed by this Court as to the maintainability of the writ petition in arbitration proceedings, the learned counsel for the petitioner was unable to demonstrate the provision of the Act under which provision the application had been

filed or as regards the maintainability of writ petition in order arising out of the Act. The petitioner has already filed proceeding before the learned District Judge seeking the payment of remuneration and it is for the petitioner to pursue his remedy before the learned District Judge, if permissible and in accordance with law. By exercising the powers under Article 227 of the Constitution of India, the order passed by the Arbitrator in arbitration proceeding cannot be quashed and set aside.

7. Writ Petition is misconceived and is accordingly dismissed. No costs.

(SHARMILA U. DESHMUKH, J.)