

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.45 OF 2021

IN

ARBITRATION APPEAL NO.13 OF 2017

Ranjit Kantilal Shah and another	...	Petitioners
Vs.		
Kruti Infrastructure and others	...	Respondents

WITH

ARBITRATION PETITION NO.55 OF 2021

Mr. Sachin Punde for Petitioners.

Mr. G. S. Godbole a/w. Ms. Ketki Gadkari and Mr. Parag Tilak for Respondents.

CORAM : MANISH PITALE, J.**DATE : JANUARY 19, 2023****P.C. :**

1. Heard learned counsel for the parties.

2. By this petition, the petitioners have prayed for appropriate action to be taken against the respondents / alleged contemnors for having disobeyed the order of this Court dated 28.08.2019, passed in Arbitration Appeal No.13 of 2017. It is claimed that certain documents including sales deeds were executed by the respondents, in violation of the direction given in the said order passed in the appeal.

3. The backdrop in which the contempt petition is filed pertains to orders passed in the aforementioned appeal, which arose out of an order passed by the District Court under Section 9 of the Arbitration and Conciliation Act, 1996. The dispute between the parties arose out of partnership business. The petitioners claim that they were forced to retire from the partnership business, without signing specific documents. But when the matter came up before this Court in the form of the

aforesaid appeal, it appears that the dispute boiled down to the share to which the petitioners would be entitled upon their retiring from the partnership business. In that context, in the order dated 30.06.2017, passed in Arbitration Appeal No.13 of 2017, this Court observed as follows:-

“3. The matter was heard at length from time to time and was heard today also. Mr. Punde states that respondent No.1 is present in the Court. Respondent No.1 is husband of respondent No.2. Upon taking instructions from him, he states that respondents accept that they stood retired from the partnership business of Kruti Infrastructure with effect from 01.04.2016 and that they will not claim any share in the immovable properties of the partnership firm. They are entitled to share of 11.11% and 11.12% respectively. Learned Counsel appearing for the parties, therefore, jointly submit that Government approved Valuer on the panel of this Court may be appointed for carrying out valuation of the following properties and submit report to this Court:

“A] Akshat Palms Township Project being undertaken on plot No.400, New Survey No.29/1, Salgarwadi, Taluka North Solapur, District Solapur situate within the limits of Solapur Municipal Corporation having following description:

1. Plot Nos.2 to 28, 37 to 39, 42, 45 to 50, 54 to 63, 66 to 70, 78 to 87, 97 to 99, 101, 103, 110 to 134, 144, 145, 148, 174, 184, 201, 208, 233, 234, 237, 240, 242, 250, 274, 275, 280, 283, 300, 305, 371, 385, 403 to 409, 418 and 419;
2. Shopping Area Amenity Plot No.36, 410 and 1(part);
3. Row Houses under construction on Plot No.71, 94 and 100;
4. Flats in Building 'C' bearing Nos.102, 107, 202, 207, 302, 303, 307, 402, 403, 406, 502, 503, 506, 508, 601, 602, 605, 608, 701 to 708;
5. Shops in Building 'C' bearing Nos.27 to 36;
6. Partly constructed Building 'A' on Plot No.1.

B] Akshat Greens Layout Project being undertaken on Gat No.101/3, Degaon, Degaon-Kavthe Road, Taluka North Solapur, District Solapur situate within the limits of Solapur Municipal Corporation having following description:

1. Open plot Nos.1 to 24, 32 to 63, 67 to 70, 77 to 102, 104 to 119, 123 to 125, 129, 131 to 139, 141 to 151;

2. Shopping Area Amenity Plot No.152.”

4. Learned Counsel for the parties agree that parties will deposit Rs.1 lakh each in this Court within one week from today.

5. In view thereof, by consent of the parties, Mr. Avinash V. Pendse having address at 7, Tukaram Niketan, Bhagat Lane, Mahim, Mumbai 400 016 is appointed as a Valuer. Learned Counsel for the parties assure that they will serve authenticated copy of this order on the Valuer so appointed. List the Appeal for further directions on 13.07.2017, High on Board. The Valuer is requested to attend the proceedings on that date.”

4. Thereafter, when the appeal was listed before this Court, the parties gave certain undertakings, which were recorded in the order dated 20.07.2017. The same reads as follows:-

“4 Mr.Phatak states that appellant No.2 Shri Satish Shobhachand Bora is present in Court today. Mr. Phatak has tendered photo-copy of his driving licence, which is taken on record and marked 'A', for identification. Upon taking instructions from him, Mr. Phatak states that until further orders of this Court in this Appeal, the appellants will not dispose of the properties mentioned in paragraph-3 of the order dated 30.6.2017. The statement made by Mr. Phatak, on instructions, is accepted in the form of undertaking to this Court.

5 Upon instructions from the respondents, Mr. Punde states that the respondents will extend full cooperation by signing the documents, such as, registration of documents, Income Tax documents, as also registration of documents under the Real Estate (Regulation and Development) Act, 2016 and will also issue NOC to the Bank for changing the Authorized Signatory of the appellant Kruti Infrastructure. Statements made by Mr. Pune, on instructions, are accepted in the form of undertakings to this Court. Learned Counsel for the parties assure that they will remain present on 31.7.2017 at 11:00 a.m. at the office of the Partnership Firm so that the valuer can prepare the estimate for valuation work of the properties.”

5. Thereafter, the appeal came up for consideration before this Court on 28.08.2019. This Court referred to the earlier order dated 30.06.2017 and also the subsequent order dated 09.08.2017. Thereafter, while disposing of the appeal, this Court observed as follows:-

“4 Today Mr. Godbole, learned counsel for the appellants has submitted that the valuation which is made by the learned valuer is on an extremely higher side and it is not agreeable to his clients to resolve the disputes on the basis of said valuation, that is, to make any payment by the appellant to the respondent on the basis of the said valuation.

5 Be that as it may, on the above conspectus, the proceedings are pending since 2017. These are interim proceedings arising on an application filed under section 9 of the Act. Admittedly the business of the partnership firm is also at a stand still. In these circumstances, it will be appropriate for the parties to commence arbitral proceedings and if possible make an endeavour to arrive at an amicable settlement. This Court cannot convert these proceedings either into a mini trial or a mini arbitration. Thus, there is no useful purpose to keep this Appeal pending, any further. It is accordingly disposed of keeping all contentions of the parties open to be agitated in appropriate proceedings.

5A. This Court in its order dated 20 July 2017 passed on this appeal, in paragraph (4) of the order had recorded a statement as made by the learned Counsel for the appellants as an undertaking to the Court, that until further orders in this Appeal, the appellants will not dispose of the properties mentioned in paragraph-3 of the order dated 30.6.2017. This statement continues to operate till date. In the facts and circumstances of the case, the parties are directed to commence the arbitral proceedings within thirty days from today. It will be also permissible for the parties to move appropriate application under Section 17 of the Arbitration and Conciliation Act, 1996 before the arbitral tribunal, seeking such interim measures. The interim order dated 20 July 2017 passed by this Court in terms of the said statement as made on behalf of the appellants, shall continue to operate till the decision by the arbitral tribunal on Section 17 application. In case the arbitral proceedings are not commenced by any of the parties within thirty days from today; this protection shall cease to have any effect. All the contentions of the parties are expressly kept open.

6 As it is a partnership dispute, liberty to the parties to

file appropriate interim proceedings before the arbitral tribunal. All contentions in that regard are expressly kept open.

7. Appeal is disposed of on the aforesaid terms. No costs.”

6. It is significant that paragraph 5A was added subsequently by speaking to the minutes pursuant to the order dated 06.09.2019, passed by this Court.

7. The petitioners herein claim that while the parties undertook the process of settlement of disputes through a mediator, few terms of settlement were still to be finalized and in this backdrop, on 27.09.2019, the petitioners sent a notice to the respondents invoking arbitration, in terms of an arbitration clause in the partnership deed.

8. It is the case of the petitioners that having invoked the arbitration clause on 27.09.2019, in terms of the order dated 28.08.2019, passed by this Court in the aforesaid appeal, the undertaking recorded on behalf of the respondents in the order dated 20.07.2017, continued to operate and that the respondents could not have dealt with the properties in question. It is then pleaded that despite giving such an undertaking to this Court, which was operating against the respondents, they chose not to dispose of certain properties by executing sale deeds in the month of August 2020.

9. On 23.10.2020, the petitioners sent a notice to the respondents alleging that they had committed contempt of the orders of this Court. The respondents sent their reply denying the claims made on behalf of the petitioners. They referred to settlement of disputes between the parties subsequent to the orders passed by this Court. It was stated on behalf of the respondents that contradictory stands were taken by the petitioners and that therefore, there was no question of the respondents having committed contempt of the orders of this Court.

10. The petitioners filed the present petition wherein notice was issued and the respondents entered appearance and filed their affidavit in reply.

11. Mr. Punde, learned counsel for the petitioners referred to the aforementioned documents and contended that in view of the arbitration clause having been invoked by the petitioners within a period of 30 days specified in the order dated 28.08.2019, the undertaking given in the said appeal on behalf of the respondents continued to operate and that therefore, this was a clear case of willful disobedience of the orders of this Court, demonstrating that the respondents deserve to be punished for contempt of this Court. It was submitted that all the necessary facts were disclosed before this Court in the contempt petition and the documents filed therewith. It was submitted that certain meetings for settling disputes that took place between the parties would be of no significance, for the reason that documents executed pursuant thereto were not executable and that the petitioners had been left high and dry in the process. It was submitted that there was no question of suppression of facts on the part of the petitioners and that this Court ought to take appropriate action against the respondents for their conduct.

12. On the other hand Mr. Godbole, learned counsel appearing for the respondents submitted that there was suppression of facts, inasmuch as a specific document, executed pursuant to meeting that took place before the mediator, was not placed before this Court. It was submitted that the said document placed on record along with the reply affidavit would show that in a meeting held on 19.09.2019, the disputes between the parties were amicably settled. The document also shows that all the parties and the advocates representing the parties signed the said document. It was specifically submitted that in terms of the said document, the parties were to take necessary steps by 30.10.2019. It was

submitted that even before the said time period expired, on 27.09.2019, the petitioner chose to issue notice allegedly invoking the arbitration clause. According to the learned counsel for the respondents, a document placed on record with the reply affidavit shows that on 24.10.2019, within the time period specified in the earlier document, the parties had acted in terms of the settlement and separate lots of plots were distributed between the parties.

13. According to the learned counsel for the respondents, this vital information and material was willfully suppressed by the petitioners in the contempt petition and that the petition deserves to be dismissed on this very ground. It was further submitted that there was no question of the respondents being hauled up for contempt of the order of this Court, for the reason that subsequent to the said order, the parties had amicably settled their disputes and the documents placed on record would show that the respondents did not deal with or dispose of any of the plots or properties that had gone to the share of the petitioners in terms of the settlement documents executed on 19.09.2019 and 24.10.2019. On this basis, it was submitted that the petition deserves to be dismissed with costs.

14. This Court has heard the learned counsel for the parties in the backdrop of the material placed on record. Perusal of the record does show that although the petitioners were party to the document executed on 19.09.2019, which records settlement of disputes between the parties, there is no reference at all to the specific document in the contempt petition. There is also no reference to the document dated 24.10.2019, pertaining to distribution of plots, executed between the parties, in pursuance of the settlement recorded in the meeting held on 19.09.2019. The said document also does not find mention in the contempt petition or the documents filed therewith. This Court is of the opinion that the

said documents had vital bearing on the orders passed by this Court in the aforementioned appeal. The petitioners had participated in the process of settlement of disputes, leading to execution of the documents dated 19.09.2019 and 24.10.2019. It was necessary for the petitioners to have filed the said documents before this Court in the present contempt petition, so as to place the entire facts, before alleging that the respondents deserve to be proceeded against for having committed contempt of this Court.

15. The failure on the part of the petitioner to place the said events and documents on record amounts to willful suppression of relevant material and there is substance in the contention raised on behalf of the respondents that the present contempt petition deserves to be dismissed, only on the said ground.

16. Yet, since the petitioners have alleged that by willfully disobeying the orders of this Court the respondents have shown scant regard to the majesty of the Court, the contentions raised on merit on behalf of the petitioners deserve to be examined.

17. A perusal of the orders passed by this Court in the aforementioned appeal on 30.06.2017, 20.07.2017 and 28.08.2019, read together, would have to be appreciated to examine as to whether it can be said that the respondents willfully disobeyed the directions of this Court or the undertaking given on behalf of the respondents. The relevant portions of the said orders have already been quoted hereinabove. The order dated 28.08.2019, passed by this Court in the said appeal specifically records in paragraph 5A that the undertaking given on behalf of the respondents to this Court pertaining to specific properties mentioned in paragraph 3 of the earlier order dated 30.06.2017, would continue to operate. It was also recorded that the parties were to commence arbitral proceedings within 30 days wherein appropriate application under Section 17 of the

said Act could be moved before the arbitral tribunal for interim measures and further that the undertaking recorded on behalf of the respondents would continue to operate till decision of the arbitral tribunal on such an application under Section 17 of the said Act, in case the arbitral proceedings were to commence within 30 days from the date of the order of the Court.

18. The learned counsel for the petitioner has emphasized upon the fact that the notice allegedly invoking the arbitration clause was issued on 27.09.2019, which was within the period of 30 days specified in the aforementioned order of this Court passed in the appeal, and that therefore, the undertaking continued to operate till date.

19. This Court is of the opinion that the events that took place subsequent to the order dated 28.08.2019 passed by this Court cannot be ignored. This Court has already found hereinabove that details of such subsequent events and relevant documents were suppressed by the petitioners in the present petition. The said documents dated 19.09.2019 and 24.10.2019, became available when the respondents filed their affidavit in reply in the present petition. A perusal of the said documents shows that subsequent to the order dated 28.08.2019, passed in the appeal, wherein this Court had indicated that it would be appropriate for the parties to amicably settle their disputes or to initiate arbitration proceedings, a meeting took place on 19.09.2019, for recording terms of settlement. The said document is signed by the petitioners as well as the respondents and their respective advocates. The said document does indicate that the parties agreed to terms, upon which the disputes could be settled. It was specifically stated in the said document that the appropriate steps as per the recorded settlement would have to be taken on or before 30.10.2019. This included distribution of plots between the parties in terms of the recorded settlement. On 24.10.2019, within the

outer limit specified in the document dated 19.09.2019, there was a document executed distributing plots between the parties and the plots were mentioned in a tabular chart annexed to the said document, pertaining to one of the projects. The said document is also signed by the petitioners.

20. In such a situation, where the petitioners not only participated in the meetings for settlement of disputes, but signed documents executed between the parties, indicating steps taken in furtherance of such settlement, it cannot be said that by selling certain portions of the properties, the petitioners had willfully disobeyed the orders of this Court.

21. It is significant that the petitioners have not denied execution of the aforementioned documents dated 19.09.2019 and 24.10.2019. It is also not denied that the plots sold by the respondents were not from the plots that went to the share of the petitioners in terms of the settlement recorded on 19.09.2019, read with the document showing distribution of plots pertaining to one project executed on 24.10.2019.

22. This Court is of the opinion that the petitioners having participated in the settlement process and having signed the documents, which recorded distribution of the properties in a particular manner, takes away the force of their contention that the respondents willfully disobeyed the orders of this Court. No case is made out for proceeding against the respondents for contempt of this Court. In such a situation, where interpretation of subsequent events, peculiar to the facts of the present case wherein the petitioners admittedly participated, is necessarily involved, this Court cannot be called upon to hold that the respondents willfully disobeyed the orders of this Court and that they showed scant regard to the majesty of the process of law.

23. This is quite apart from the finding rendered hereinabove that the present petition deserves to be dismissed, only on the ground of suppression of relevant material on the part of the petitioners.

24. In view of the above, there is no substance in the present petition and it stands dismissed.

ARBITRATION PETITION NO.55 OF 2021

The petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 bearing Arbitration Petition No.55 of 2021, shall be heard on 09.02.2023.

(MANISH PITALE, J.)

Minal Parab