

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 18512 OF 2022
IN
ARBITRATION APPEAL NO. 24 OF 2022**

Mr. Sachendra Sadashiv Shetty
Age 51 Years, Occ. Retired,
R/o. 11, Devaki Apartment,
Mahatma Nagar,
Nashik, District – Nashik & Ors. ...Applicants/Appellants
Vs.
Ratnakar Anaya Shetty & Anr. ...Respondents

Mr. Amey Deshpande a/w. Ms. Vandana Bait, for the Applicants /
Appellants.
Mr. H. M. Inamdar, for the Respondent Nos.1 and 2.

**CORAM : MANISH PITALE, J.
DATE : 30 MARCH 2023**

P.C.

. Heard learned counsel for the parties. By this appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellants have challenged the judgment and order dated 13/4/2022, passed by the Principal District Judge, Nashik, whereby the application filed under Section 34 of the said Act was dismissed, thereby confirming the arbitral award passed in

the present case.

2. The arbitration proceedings arose out of an arbitration clause contained in a Deed of Partnership executed between the parties. The respondent was the claimant and the appellants were the opponents before the learned arbitrator. On 3/10/2018, the learned arbitrator pronounced the award, thereby partly allowing the claim of the respondent. It was declared that the partnership firm with name and style 'Estate Canteen' shall stand dissolved with effect from 30/11/2018 and a specific direction was given to the appellants to give possession of the particular plot and they were also directed to pay damages to the respondent for a specific period.

3. Aggrieved by the said award, the appellants filed the aforesaid application under Section 34 of the said Act before the District Court at Nashik. By the impugned judgment and order dated 13/4/2022, the District Court dismissed the application, thereby confirming the arbitral award.

4. Aggrieved by the same, the appellants filed the present appeal, wherein a specific ground was raised to the effect that the arbitral award deserves to be set aside, only on the ground that when the award was pronounced, the mandate of the learned arbitrator had already expired.

5. This Court recorded the aforesaid specific contention

raised on behalf of the appellants and on 19/10/2022, granted ad-interim stay of the impugned award.

6. The learned counsel for the appellants submitted that in the present case, the aforesaid ground was specifically raised before the District Court when the application under Section 34 of the said Act was argued. It is clear from paragraph 7(16) of the impugned judgment and order dated 13/4/2022, passed by the District Court wherein the said ground pertaining to the mandate of the learned arbitrator having expired, was specifically noted. The learned counsel for the appellants submitted that the District Court failed to consider the contentions raised by the rival parties concerning the aforementioned ground, which goes to the very root of the matter and erroneously dismissed the application filed under Section 34 of the said Act.

7. It was submitted that since the impugned award passed by the learned arbitrator was rendered without jurisdiction, as his mandate had expired, the District Court ought to have allowed the application filed under Section 34 of the said Act. It was submitted that although the grounds for setting aside the arbitral award under Section 34 of the said Act are limited, since the question of the very jurisdiction of the learned arbitrator was involved, which indicated that the award was rendered without jurisdiction and hence patently illegal, the District Court ought to have allowed the application and set aside the award. In order to

support the said contention, the learned counsel for the appellants submitted that the learned arbitrator was appointed on 22/9/2016. It was submitted that although there was no clear document to show when the arbitrator entered upon the reference, the impugned award recorded that the claim was submitted on 12/11/2016. It was submitted that the award, having been rendered admittedly on 3/10/2018, was well beyond the period of 12 months, thereby indicating that in the absence of extension of the mandate of the learned arbitrator, the arbitral award was rendered illegal.

8. The learned counsel appearing for the respondent did not dispute the chronology of events and dates brought to the notice of this Court. All the events clearly show that in the absence of extension of mandate of the learned arbitrator, as per provisions of the said Act, on the date when the impugned award was pronounced, the mandate of the learned arbitrator had already expired.

9. The District Court in the impugned judgment and order specifically took note of the said contention in paragraph 7(16) and yet failed to consider and discuss the same, thereby demonstrating the grave error in the present case. On this sole ground, the impugned judgment and order deserves to be set aside.

10. The impugned award also deserves to be set aside on this very ground. In view of the above, the appeal is allowed. The impugned judgment and order is hereby set aside. The application filed under Section 34 of the said Act is allowed and the impugned award dated 3/10/2018 is set aside, only on the ground that the mandate of the learned arbitrator had expired.

11. At this stage, the learned counsel for the respondent, on instructions, submitted that in the interest of justice, if the appellants agreed, this Court may appoint arbitrator for resolution of their disputes. The learned counsel for the appellants, on instructions, agrees to the proposal made on behalf of the respondent.

12. The learned counsel for the parties, on instructions, agreed upon the appointment of a sole arbitrator for resolution of disputes between the parties. Accordingly, Mr. S. N. Pathak, Former District Judge, is appointed as the sole Arbitrator, for resolution of the disputes between the parties. The details of the learned Arbitrator are as follows.

Mr. S. N. Pathak,
Address – Flat No.10, Nishigandha Housing
Society, Bhabanagar, Navshakti Chowk,
Nashik.
Mobile No. 9922366559

13. It is made clear that fresh arbitration proceedings before the learned arbitrator appointed by this order shall commence from the stage of recording of evidence, as statement of claim and statement of defence of the parties submitted in the earlier round can be made the basis for commencement of proceedings in this fresh round of arbitration. It is made clear that the contentions of the rival parties are expressly kept open. It is expected that the learned Arbitrator will conduct the proceedings expeditiously and in accordance with law.

14. The petitioner to inform the learned arbitrator immediately about the order passed today.

15. The learned arbitrator is requested to communicate his consent and disclosure statement as per Section 11(8) and 12(1) of the aforesaid Act, within four weeks to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be as per schedule IV to the said Act.

16. All contentions of the parties are kept open.

17. The Appeal stands disposed of, in aforesaid terms.

MANISH PITALE, J.