

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7519 OF 2022

Bindiya Romi Sidhwani

Petitioner
.. (Org. Plaintiff)

Versus

Messers Pankaj Investments and Ors.

Respondents
.. (Org. Defendants)

WITH

WRIT PETITION NO.7520 OF 2022

Romi k. Sidhwani

Petitioner
.. (Org. Plaintiff)

Versus

Messers Pankaj Investments and Ors.

Respondents
.. (Org. Defendants)

.....

- Mr. Sandeep Shivprasad Sharma, Advocate for Petitioner in both Writ Petitions.
- Mr. P. S. Ganesh Murthy i./by K. V. Aiyar and Associates, Advocate for Respondent No.4.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2024

P.C.:

1. Heard Mr. Sharma, learned Advocate for Petitioner in both the Writ Petitions and Mr. Murthy, learned Advocate for Respondent No.4 in both the Writ Petitions.

2. These Writ Petitions take exception to separate orders, both dated 17.01.2022 passed by learned Trial Court in Notice of Motion No.2553 of 2017 and in Notice of Motion No.2554 of 2017 filed by Defendant No.4 before the Trial Court. Defendant No.4 would

contend that in view of the facts and circumstances of he having ceased to be partner of Defendant No.1 – Firm on and from 02.07.2005, his name in the array of parties should be deleted as the claim filed by the Plaintiff is against Defendant No.1 – Firm and its partners. Suit is filed by Plaintiff against Defendant No.1 and its partners in the year 2008 well after he having been ceased to be a partner. He would submit that by virtue of an Arbitration Award between the partners of the Defendant No.1 – Firm declaring and holding that the liability of the Company would that be of Defendant Nos.2 and 3, no liability can be foisted on Defendant No.4. The fundamental facts with respect to the transaction between Plaintiff and Defendants have been enumerated elaborately in paragraph No.6 of the impugned order. I need not repeat the same for brevity.

3. What is of significance is to note that the Arbitral Award dated 02.07.2005 between the partners and Defendant No.1 – Firm has also been upheld by this Court in statutory proceedings. There is no further challenge to that Award before the Supreme Court. By virtue of that Award, the Defendant No.4 has ceased to be partner of Defendant No.1 – Firm and it has been unanimously held that if the Company has been taken over by the other two brothers, then the liability of the Company would be that of the brothers only who have taken over the Company. In the present case, Defendant No.1 has

been taken over by Defendant Nos.2 and 3. The said Award and statutory orders passed by the Courts have been perused by the learned Trial Court and only thereafter reasoned findings are returned in paragraph Nos.7 and 8 of the order dated 17.01.2022. The aforesaid been the position on facts and in law and the Award having not been challenged by Defendant Nos.2 and 3 any further, the Award has become final and absolute and impleadment of Defendant No.4 was unwarranted.

4. Be that as it may, the Plaintiff would undoubtedly not be aware about the proceedings between these Defendants. The learned Trial Court after considering the aforesaid and legality and validity of the Award which has been placed before the learned Trial Court has concluded that liability of Defendant No.4 is already ceased with the passing of the Award and therefore he cannot be continued as a Defendant in the suit proceedings.

5. Mr. Sharma would contend that the Award has not been produced for the benefit of the Trial Court. If that be so then it would be unfathomable to think that the learned Trial Court has given reasoned findings after perusal of the orders and Award in its order dated 17.01.2022.

6. Mr. Sharma would refer to and rely on the decision in the

case of **Syndicate Bank V/s. R. S. R. Engineering**¹. The facts of the present case are clearly distinguishable from the facts of that case.

7. Mr. Murthy, learned Advocate appearing for Respondents would submit that copy of Award was appended to the written statement of Defendant No.4.

8. In view of the above observations and findings, no interference is warranted in the orders dated 17.01.2022 passed by learned Trial Court in Notice of Motion No.2553 of 2017 and in Notice of Motion No.2554 of 2017. The present Writ Petitions deserve to be dismissed and are comprehensively dismissed.

9. With the above directions, Writ Petitions are disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

¹ MANU/SC/0404/2003.