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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 100 OF 2024

Amrish H. Soni ... Petitioner

V/s.

Mr. Chetan Narendra Dhakan & Ors. ... Respondents

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 33385 OF 2023

Chetan Narendra Dhakan ... Petitioner

V/s.

Amrish H. Soni & Ors. ... Respondents

Mr. Rashmin Khandekar a/w Pranav Nair and Anand Mishra for the Petitioner in CARBPL/33385/2023 and for Respondent No.1 in ARBP/100/2024.

Dr. Uday Warunjikar a/w Sumit Kate for the Petitioner in ARBP/100/2024 and for Respondent No.1 in CARBPL/33385/2023

CORAM : ARIF S. DOCTOR, J.

DATE : 16th JULY, 2024

P.C.:-

1. Since both the captioned Arbitration Petitions arise from the same order i.e. the order dated 18th October 2022 passed under Section 17 ("Tribunal's Order") of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") and

given the commonality of the Parties and the issues which arise for determination with the consent of Learned Counsel both the Petitions were heard together and are being disposed of by this common order.

2. For clarity, Commercial Arbitration Petition (L) No. 33385 of 2023 is filed under Section 9 ("Section 9 Petition") of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") and Arbitration Petition No. 100 of 2024 is filed under Section 37 ("Section 37 Petition") of the Arbitration Act. The Petitioner in the Section 9 Petition i.e. Mr. Chetan Narendra Dhakan is the Claimant in the arbitration and the Petitioner in the Section 37 Petition i.e. Mr. Ambrish H. Soni is Respondent No. 1 both in the arbitration as also in the Section 9 Petition.

3. For convenience, in this order, the parties shall be referred to as they are arrayed in the Section 9 Petition i.e. in Commercial Arbitration Petition (L) No. 33385 of 2023.

4. Before adverting to the rival contentions, it is useful to set out the following facts, viz.

- i. The Petitioner and Respondent Nos. 1 and 2 are partners of Respondent No.3 ("the Firm"). The Firm carries on the business of construction.
- ii. In or about the year 2018, disputes and differences arose between the Petitioner on the one hand and Respondent Nos. 1 and 2 on the

other hand. It was primarily the grievance of the Petitioner that Respondent Nos. 1 and 2 were dealing with the business of the Firm to the detriment of the Petitioner. It was thus that the Petitioner invoked Arbitration under a Retirement Deed dated 21st October 2021 (Partnership Deed). The Petitioner then filed a Petition, under Section 9 of the Arbitration Act ("the first Section 9 Petition") as also an Application under Section 11 of the Arbitration Act for appointment of an Arbitrator.

- iii. By an order dated 20th December 2018 passed in the first Section 9 Petition this Court recorded the statement of Learned Counsel appearing on behalf of Respondent No. 1 that Respondent No. 1 would abide by clauses 11 and 17 of the Deed of Partnership. Clauses 11 and 17 of the Deed of Partnership provide as follows, viz.

"11. PARTNERS DUTIES:

Each partner shall be just and faithful to the other.

No partner shall:

(a) Sell, Mortgage, charge or otherwise dispose of the effects, assets of any property or any part thereof the partnership firm.

(b) Assign or in any way dispose of his share of any part thereof in the Partnership firm.

(c) Lend or borrow any money or property on credit without the previous written consent of the other partners in other than ordinary course of business.

(d) Stand surety or bail for any one without the previous consent in writing of the other partners.

(e) Compromise any claim or debt without prior written consent of the other partners.

(f) Disclose or divulge any secrets, communication affairs, matters & things of the firm to any person.

The Partners shall:

a) Punctually pay his separate debt and indemnify the other partners and the assets of the firm against the same and all expenses on account of the firm.

b) Forthwith pay all moneys, cheques and negotiable instruments received by his on account of the firm.

c) Be just and faithful to each other and at all times give such other full information and truthful explanation of the matter relating to the affairs of the partnership and afford any and/or every assistance in his power in carrying on the business for their mutual advantage.

d) Indemnify others from all losses and expenses on account of breach of any clauses of this Partnership Deed."

"17. PARTNERS RIGHTS IN CASE OF DISPUTE.

No partners in case of any dispute, lock up the business premises or godown or freeze banking account of the firm or do anything which will have the affect of doing the business of the firm. In such circumstances, disputes will be referred to arbitration as referred to in clause 14 above."

iv. On 20th January 2020 this Court disposed of both the first Section 9

Petition as also the Arbitration Application under section 11 of Arbitration Act by appointing a Sole Arbitrator and *inter alia* directed that the previous status quo order i.e. the order dated 20th December 2018 would continue to operate until the Arbitrator makes and renders the final award.

- v. The Petitioner then filed an Application under Section 17 of the Arbitration Act, before the Arbitral Tribunal. It was this application that came to be disposed of by the Tribunal's Order dated 18th October 2022. The operative part of the order reads thus, viz.

"I. In view of Status Quo granted by the Hon'ble High Court there is no need to grant prayer cl (C) of interim application.

II. The statement of Respondent No.1 regarding not creating third party rights over Santacruz property is accepted, as statement made to the Tribunal.

III. Since the Respondent No.2 has intentionally stayed away from the Arbitration proceeding including the hearing of Section 17 application, the Respondent No.2 is injuncted from creating third party rights of whatsoever nature over the property of firm situated at Santacruz.

IV. The statement of Respondent No.1 through his Advocate that, the list of all the properties of the firm would be submitted, is accepted. The Respondent No.1 and / or Respondent no.2 are directed to disclose on oath the list of all the properties (movable

& immovable) of Respondent No.3 within the period of 2 weeks of passing of this order. The order of Status Quo granted by the Hon'ble High Court shall equally apply to such properties which will be disclosed by the Respondents.

V. The order of Status Quo granted by the Hon'ble High Court would equally apply to the property situated at Virar more particularly Property bearing Survey No.254 Hissa no. 5 pt.,6pt.,7 pt.,8,9 & Survey No.252 487/3 (New) Hissa No.3 to 10 pt. situated at Village Virar District Palghar (Pg 59 of claim Petition).

VI. The Respondents are directed to submit audited accounts duly authenticated by the Chartered Accountant of the partnership firm viz. Respondent No.3 from the year 2013 till date alongwith documents evincing payment and receipt on behalf of Respondent No.3 firm within a period of 4 weeks of passing of this Order.

VII. The Application bearing no C-2 of 2022 is allowed in terms of prayer Cl (A) and (B) in above terms with no order as to the costs."

- vi. Respondent No. 1 thereafter sought a review of the above order before the Arbitral Tribunal. The review was however dismissed by an order dated 23rd November 2023.

5. Mr. Khandekar, Learned Counsel appearing on behalf of the Petitioner submitted that Respondent No.1 instead of complying with the

Tribunal's order had in fact shortly after the same was passed proceeded to commence construction activities on the said Virar property in collusion and connivance with Respondent No.2. In support of his contention, he placed reliance upon certain photographs of a Muhurat ceremony being conducted on the Virar Property by Respondent No. 1 and 2 on 28th November 2022. He submitted that these photographs were posted by Respondent No. 1 on Facebook and when the Petitioner in response to the said photographs responded by uploading/posting copies of the Tribunal's order dated 18th October, 2022, Respondent No.1 responded by commenting as follows:

"This is not stay order don't full people there is no chance you even can't stop anything haahaaa"

It was thus he submitted that Respondent No.1 was acting in brazen disregard of not only of the Tribunal's order but also of the order dated 20th January 2020 passed in the first Section 9 Petition.

6. Mr. Khandekar then submitted that the Petitioner was constrained to file the present Petition under Section 9 of the Arbitration Act for appointment of a Court Receiver since the Tribunal under Section 17 could not do so. He additionally pointed out that given the conduct of Respondent No. 1 and the brazen disregard that Respondent No. 1 had shown for the orders passed by this Court as also the Tribunal, the only option and efficacious interim measure of

protection available to the Petitioner, to safeguard Virar property was to apply for appointment of the Court Receiver, High Court, Bombay. Mr. Khandekar submitted that if the Court Receiver, High Court, Bombay was not appointed as Receiver of the Virar property, Respondent No.1 and 2 would continue to construct on the Virar property and thereafter proceed to alienate flats. This he submitted would cause grave prejudice to the Petitioner and also effectively delay the arbitration proceedings.

7. Mr. Khandekar took pains to point out that the Arbitral Tribunal had on the basis of the material before it exercised its discretion to arrive at the conclusion that the status quo order passed by this Court in the first Section 9 Petition also applied to the Virar property. He pointed out that the Tribunal's Order was *inter alia* based on the fact that (i) an amount of Rs. 50 Lakhs was admittedly paid from the account of the Firm as an advance for purchase of the Virar property and (ii) that the Virar property was admittedly shown as an asset of the Firm in the Firm's Balance Sheet dated 31st March 2017.

8. Mr. Khandekar then pointed out that the Tribunal had after considering clause 11 and 17 of the Deed of Partnership and the material on record which admittedly showed that (i) the sum of Rs. 50 Lakhs had been paid by the Firm as advance for the Virar property and (ii) the fact that the same was shown as an asset of the Firm in the balance sheet, held that the order of status quo applied to the Virar property. He placed reliance upon the judgment of this

Court in the case of *Elster Instromet B. V. vs. Mrunal Gandhi*¹ to submit that matters of interpretation of provisions of contract are primarily for the Arbitrator to decide and that it was not open to Court under Section 37(2)(b) to re-interpret the contract and take an alternate view.

9. He then placed reliance upon the judgments of this Court in the case of *Max Healthcare Institute Limited vs Touch Healthcare Private Limited & Ors.*², *Karanja Terminal & Logistics Pvt. Ltd. vs. Sahara Dredging Ltd.*³ and *Raymond Limited vs. Akshaypat Singhania & Anr.*⁴ and pointed out therefrom that the scope of Section 37(2)(b) was extremely circumscribed. He pointed out that a Court cannot substitute its own view for that of the Arbitrator as long as all relevant material has been taken into consideration by the Arbitrator. He submitted that so long as the Arbitral Tribunal had considered the relevant material and taken up a plausible view, Courts would be loath to interfere under Section 37(2)(b).

10. It was basis the above that he submitted that the Petition filed under Section 37 of the Arbitration Act deserved to be dismissed and the Petition under Section 9 deserved to be allowed.

11. *Per contra*, Dr. Warunjikar, the Learned Counsel appearing on behalf of Respondent No. 1 at the outset submitted that the Petitioner had

1 2024BHC-OS.1697

2 2023.BHC-OS.14949

3 2023 SCC OnLine Bom 594

4 2019 SCC OnLine Bom 227

deliberately not annexed to Commercial Arbitration Petition (L) No.33385 of 2023 the Statement of Claim as also the order dated 20th December 2018 passed in the first Section 9 Petition. He pointed out from the Statement of Claim which was annexed to the Affidavit in Reply out that prayer clause (A) thereof was for true and faithful accounts of the Firm. He then submitted that the prayers sought for by the Petitioner in the present Section 9 Petition i.e. for appointment of a Court Receiver, High Court, Bombay were beyond the reliefs sought for in the Statement of Claim and thus could not be granted.

12. Dr. Warunjikar then invited my attention to the order dated 20th December 2018 and pointed out that the statement made by Counsel and as recorded in the said Order was on the basis that the only asset of the Firm was the land situated at Santacruz. He submitted that even the Statement of Claim filed by the Petitioner made a mention of only the Santacruz property and not the Virar property. He submitted that the Learned Arbitrator had therefore gravely erred in concluding that the order of status quo passed in the first Section 9 Petition also extended to the Virar property.

13. He then submitted that there was no material and/or document to establish that the Virar property was the property of the Firm. He pointed out that the amount of Rs. 50 Lakhs shown in the balance sheet of the Firm was simply in the nature of an advance which by itself would not create any interest in the Virar property. He submitted that the person to whom the advance was

given had since passed away without executing any document in favour of the Firm. He further submitted that the Virar property was then transferred by the heirs of individual to whom the advance was paid to another entity which was admittedly not the Firm. It was thus he submitted that the Tribunal had committed error of law and of fact while passing the order dated 18th October 2022 and it was thus that the Tribunal's order was required to be set aside.

14. Dr. Warunjikar also invited my attention to clause 17 of the Partnership Deed and pointed out that what the Petitioner was effectively seeking to do was to lock up the business of the Firm. He submitted that this would be therefore contrary to clause 17 of the Deed of Partnership. Learned Counsel then submitted that no prejudice whatsoever would be caused to the Petitioner if Respondent No.1 were to at its own expense carry on construction on the Virar property.

15. Dr. Warunjikar submitted that the Petitioner's contention that the Development Agreement was without consideration was also entirely without merit since the consideration under the Development Agreement was that certain flats that were to be given to the legal heirs of the landowner on completion of development. It was thus he submitted that the Petitioner's contention that the Development Agreement was without consideration was plainly untenable.

16. It was thus that he submitted that Arbitration Petition No. 100 of 2024 must be allowed and Commercial Arbitration Petition (L) No. 33385 of

2023 must be dismissed.

17. After having heard Learned Counsel for the Parties at length and after considering the rival contentions as also the case law upon which reliance was placed, I have no hesitation in holding that the Arbitration Petition No 100 of 2024 must fail for the following reasons, viz.

- i. The Scope of judicial interference under Section 37(2)(b) of the Arbitration Act is now more than well settled. A conjoint reading of the judgements of this Court in the case of *Elster Instromet B.V.* (supra), *Max Healthcare Institute Limited* (supra), *Karanja Terminal & Logistics Pvt. Ltd.* (supra) and *Raymond Limited* (supra) it is clear that the Court (i) will not interfere with the exercise of discretion by the Arbitral Tribunal and substitute its own view except when the Arbitral Tribunal has acted arbitrarily, or capriciously or where the Arbitral Tribunal has ignored the well settled principles of law regulating the grant or refusal of interlocutory injunctions (ii) cannot reassess the material based on which the Tribunal has arrived at its decision so long as the Tribunal has considered the material and had taken a plausible view, (iii) cannot interfere with the exercise of discretion by the Tribunal, if the discretion of the Tribunal had been exercised in a reasonable and judicious manner, solely on the ground that would have come to a contrary

conclusion, (iv) that matters of interpretation of the provisions of a contract lie primarily within the domain of the Arbitral Tribunal and (v) cannot constantly interfere with and micro manage proceedings which are pending before Arbitral Tribunals. Thus, it is in this backdrop that I must consider whether any case for interference has been made out by Dr. Warunjikar in Arbitration Petition No. 100 of 2024.

- ii. On a perusal of the Tribunal's order, I find that the Learned Arbitrator has after interpreting clause 11 and 17 of the Partnership Deed and considering the material on record, come to the conclusion that the order of status quo dated 20th January 2020 passed by this Court in the first Section 9 Petition would equally apply to the Virar property. I find that the Learned Arbitrator has done so primarily, taking into consideration the fact that there was no dispute (i) that the amount of Rs. 50 Lakhs was paid by the Firm towards the purchase of Virar property and (ii) the fact that Virar property was shown as an asset of the Firm in the balance sheet of the Firm. Hence, the conclusion reached by the Tribunal was on the basis of material before Tribunal. Thus, the view taken by the Learned Arbitrator was most certainly a plausible view and not one which can in any manner be said to be arbitrary, capricious or not based on the material before the Tribunal. Given this, in any view

there is no question of this Court now reassessing the material in an attempt to arrive at any contrary view.

- iii. The contention that the Petitioner had in the Section 9 Petition, suppressed the Statement of Claim or the order dated 20th December, 2018 are purely as so much of prejudice and totally lacking in any substance. Submissions of Mr. Warunjikar's contention that the relief in the statement of claim was only qua accounts of the firm is factually erroneous since the same ignores prayer clause (b) which makes specific relevance to the Virar property. Also equally untenable is the contention that the Petitioner has in the Section 9 Petition suppressed the order dated 20th December 2018 passed by this Court in the first Section 9 Petition since the said order made clear that the statement made by Counsel appearing on behalf of Respondent No. 1 was limited only to the Santacruz property of the Firm and not the Virar property. A plain reading of the order dated 20th December 2018 makes clear that the statement made by Counsel appearing on behalf of Respondent No. 1 that Respondent No. 1 would abide by Clause 11 and 17 of the Partnership Deed leaves no manner of doubt that this would take within its sweep all the assets of the Firm and the Tribunal's order as I have already noted above holds that this would include the Virar property. Hence, what is now being attempted by

Respondent No. 1 is to somehow resile from a solemn statement made to the Court. It is thus that I find that there is no question of now permitting Respondent No.1 to construct upon the Virar property as was submitted by Mr. Warunjikar, even if Respondent No.1 was to bear all the expenses. To permit this would not only be contrary to clauses 11 and 17 of the Deed of Partnership, but more importantly the same would be in the teeth of the statement made by Learned Counsel for Respondent No.1.

- iv. Also, apart from contending that there is no document qua the Virar property executed with the Firm, Respondent No. 1 has not so much as even attempted to demonstrate on what basis the sole propriety firm of Respondent No. 1 i.e. Shiv Shakti Developers had entered into a Development Agreement in respect of a property for which admittedly consideration flowed from the Firm and which was shown in the balance sheet of the Firm as an asset of the Firm. Equally crucial, is the fact that no third party has come forth claiming to be aggrieved by this order. In these circumstances, I find that there is no question of any interference with the Tribunal's Order, and it is thus that the Arbitration Application No. 100 of 2024 must necessarily fail.

- v. *Crucially*, on perusal of the Arbitration Petition, I do not find a single ground of challenge raised therein which would bring the same within the confines of the limited scope of grounds of challenge available under Section 37(2)(b). The only real ground of challenge is that the Tribunal had misinterpreted the order passed by this Court. While one of the grounds taken was that the Tribunal has committed an error of law, no argument was advanced before me as to what this error of law in fact was. The entire thrust of the grounds in Petition are that the Tribunal had arrived at an incorrect finding on facts, which as already noted above is not a ground on which this Court can interfere in these proceedings.
- vi. Hence, for the above reasons Arbitration Petition No. 100 of 2024 is thus dismissed.

18. Now, coming to Commercial Arbitration Petition (L) No. 33385 of 2023, I find that the same deserves to be allowed for the following reasons, viz.

- i. The Tribunal's order leaves no manner of doubt that the status quo order passed by this Court i.e. the order dated 20th January, 2020 passed in the first Section 9 Petition would apply to the Virar property. This being the case, it was not open to Respondent No.1 to in any manner alter the status quo of the said Virar property,

without leave of the Court or the Tribunal. However, the record bares out that Respondent No. 1 has acted with impunity and in brazen disregard of the Tribunal's Order. I say so for the following reasons, viz.

- a. Respondent No. 1 little over a month after the Tribunal's Order commenced groundbreaking activities on the Virar property.
 - b. When the Tribunal's order was specifically pointed out to Respondent No.1, he responded by posting "*This is not stay order don't full people there is no chance you even can't stop anything haahaaa*"
 - c. Respondent No. 1 has in the very first ground i.e. ground (i)⁵ of the Section 37 Petition specifically accepted that the Tribunal's order was an order of injunction despite which Respondent No. 1 had proceeded to act in breach thereof.
- ii. It is well settled and as held by the Hon'ble Supreme Court in the case of ***Arcelor Mittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***⁶ that on a harmonious reading of 9(1) and 9(3) of the Arbitration Act the Court is not denuded of its power to grant

5 At the outset it is submitted that Ld. Arbitrator committed a error by making a reference to the Virar property and passing an order of injunction with reference tot he said property in view of the order passed by the Hon'ble High Court. The Ld. Arbitrator misinterpreted the order passed by the Hon'ble High Court. Therefore, interference of this Hon'ble High Court is necessary.

6 (2022) 1 SCC 712

interim relief when an Arbitral Tribunal is constituted. What the Court has to examine is if the Applicant has an efficacious remedy under Section 17 or that circumstances exist, which may not render the remedy provided under Section 17 of the 1996 Act efficacious. It is in these circumstances that the Court has the discretion to entertain an application for interim relief under Section 9 of the Arbitration Act. Therefore, clearly this Court can grant interim relief under Section 9 if the circumstances so warrant.

- iii. In the present case, the Petitioner has sought the appointment of the Court Receiver, High Court Bombay since Respondent No.1 has acted in breach of the order of status quo. It is well settled that the Arbitral Tribunal cannot grant an order of appointment of Court Receiver. Thus, what has to be considered is whether the Petitioner has made out a case for the grant of this relief in the present Section 9 Petition.
- iv. Given that I have already noted above that Respondent No. 1 has acted in brazen disregard of the Tribunals order I find it entirely just and convenient as an interim measure of protection to safeguard and preserve the Virar property, to appoint the Court Receiver High Court, Bombay as the Receiver of the Virar property i.e. bearing Survey No.254 Hissa no. 5 pt.,6pt.,7 pt.,8,9 & Survey No.252 487/3 (New) Hissa No.3 to 10 pt. situated at Village Virar

District Palghar. The appointment of the Court Receiver shall be on the usual terms.

- v. Thus, Commercial Arbitration Petition is allowed in terms of prayer clauses (a), (b) . In so far as prayer clause (c) in concerned same is allowed partially i.e. the Receiver shall be appointed only in respect of the Virar property i.e. bearing Survey No.254 Hissa no. 5 pt.,6pt.,7 pt.,8,9 & Survey No.252 487/3 (New) Hissa No.3 to 10 pt. situated at Village Virar District Palghar.

19. After this order was pronounced, Dr. Warunjikar prayed for a stay of the order. This was opposed by Mr. Khandekar who submitted that any stay would prejudice the Petitioner. Hence, I am not inclined to grant any stay but direct that the Court Receiver shall act upon this order after two weeks from the same being uploaded.

20. Dr. Warunjikar then once again made a request that Respondent No. 1 be permitted to construct upon the Virar property at his cost. He submitted that no prejudice would be caused to the Petitioner if this was permitted since the Petitioner would at the highest be entitled to one third of the receivables. However, for the reasons recorded above as also Clause 17 of the Partnership Deed, which is specific in terms, I find that this request cannot be accepted.

21. Both the captioned Petitions are disposed of in aforesaid terms.

(ARIF S. DOCTOR, J.)