

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

APPEAL NO. 55 OF 2024

IN

ARBITRATION PETITION NO. 355 OF 2022

John Peter Fernandes

....Appellant

: Versus :

Ramakant Ramchandra Ghanate & Anr.

....Respondents

Mr. Anshul Anjarlekar *i/b Raval-Shah & Co., for Appellant.*

Mr. Amrut Joshi *a/w Mr. Yazad Udhwadia a/w Mr. Shravan Purohit i/b Mr. Nikhil Mishra, for Respondent No. 1.*

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

DATED : 20 AUGUST 2025.

JUDGMENT (*Per Sandeep V. Marne, J.*) :

1) This Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (**the Act**), challenging the judgment and order dated 23 March 2023 passed by the learned Single Judge of this Court, dismissing Appellant's Arbitration Petition No. 355 of 2022 filed under Section 34 of the Act and allowing Arbitration Petition (L) No. 24217 of 2022 to the extent of setting aside the direction in the Award for refund of amount of Rs.6,50,000/- to the Appellant with interest at the rate of

8% per annum. By award dated 31 March 2022, the learned Arbitrator had rejected Appellant's prayer for specific performance of Agreement dated 6 October 2003. By repelling challenge to the said part of the Award in a petition filed under Section 34 of the Act, the Award has been confirmed. However, the Award had also directed refund of amount of Rs.6,50,000/- to the Appellant together with interest at the rate of 8% per annum with effect from 1 August 2004. Respondent No. 1 has succeeded in setting the said direction in the Award in Arbitration Petition (L) No. 24217 of 2022. The Appellant is aggrieved by a common judgment and order dated 23 March 2023 passed by the learned Single Judge and has accordingly filed the present Appeal under the provisions of Section 37 of the Act.

2) Brief facts of the case are that Respondent Nos. 1 and 2 are the owners of shop Nos. 2 and 3 situated at ground floor of the building 'Shree Samarth Niwas' situated at City Survey No. 6, Plot No. 383/1, Jagannath Bhatnagar Marg, Parel, Mumbai 400 012 ("**subject shops**"). Respondent Nos. 1 and 2 agreed to sell the subject shops to the Appellant and parties executed registered Agreement for Sale dated 6 October 2003. It is a case of the Appellant that in pursuance of the said Agreement, he paid sum of Rs. 11,50,000/- towards part consideration. Appellant filed Suit No. 2412 of 2004 before City Civil Court for specific performance of Agreement dated 6 October 2003. A Notice of Motion for interim relief was filed, which was rejected. Appellant filed Appeal in which parties entered into consent terms and Appeal was disposed of referring the parties to arbitration.

3) Appellant filed his Statement of Claim, which was resisted by the Respondents. An Award dated 3 February 2006 was made by the Arbitral Tribunal directing Respondents to refund the amount of Rs. 11,50,000/- along with interest at the rate of 18% per annum

recording a finding that the said amount was indeed received by the Respondents in pursuance of the Agreement. Respondents challenged the Award dated 3 February 2006 under Section 34 of the Act. On 8 November 2006, the Arbitration Petition was allowed and Arbitral Award was set aside. Appellant filed appeal under Section 37 of the Act and the Division Bench remanded the matter to the learned Single Judge for hearing the petition afresh. On 12 December 2018, the learned Single Judge constituted another Arbitral Tribunal but limited the reference to entitlement of claim of Rs. 11,50,000/-. A Review Petition was filed by both the parties seeking review of order dated 12 December 2018, which were rejected. The matter was further carried in appeal under Section 37 of the Act and the Division Bench kept open all the contentions of rival parties to be raised before the Arbitral Tribunal.

4) The learned Arbitrator made award dated 31 March 2022 rejecting the prayer of the Appellant for specific performance of Agreement dated 6 October 2003. However, Respondent No. 1-Mr. Ramakant Ramchandra Ghanate, was directed to pay amount of Rs. 6,50,000/- to the Appellant with simple interest at the rate of 8% per annum from 1 August 2004. Both the sides got aggrieved by the Award dated 31 March 2022. Appellant filed Arbitration Petition No. 355 of 2022 under Section 34 of the Act, challenging Award dated 31 March 2022 to the extent of non-grant of prayer for specific performance. Respondent No. 1, on the other hand, challenged Award dated 31 March 2022 to the limited extent of award of amount of Rs. 6,50,000/- with interest.

5) By common judgment and order dated 23 March 2023, the learned Single Judge has rejected the challenge raised by the Appellant

while allowing the challenge raised by Respondent No. 1. The learned Single Judge upheld the award to the extent of non-grant of relief of specific performance in Appellant's favour. However, the Award is set aside to the limited extent of direction issued to Respondent No. 1 to pay to the Appellant amount of Rs. 6,50,000/- together with interest. Appellant is aggrieved by rejection of his Arbitration Petition and allowing the Arbitration Petition filed by Respondent No.1 and has accordingly filed the present appeal under the provisions of Section 37 of the Act.

6) We have heard Mr. Anjarlekar, the learned counsel appearing for the Appellant. He would submit that the learned Single Judge has erred in dismissing Section 34 petition filed by the Appellant. That the Agreement for Sale was registered by the parties, indicating readiness and willingness on the part of the Appellant to perform his part of the contract. That the subject shops were intended to be purchased by the Appellant to commence the business of restaurant since Appellant was working as a Waiter in Breach Candy Swimming Pool Trust. That the Appellant had already kept funds ready for payment of balance amount of consideration. That the readiness and willingness on the part of the Appellant was clearly established and that the learned Single Judge has erred in dismissing Appellant's Arbitration Petition No. 355 of 2022.

7) So far as the learned Single Judge setting aside the direction for refund of amount of Rs.6,50,000/- with interest is concerned, Mr. Anjarlekar would submit that the actual amount paid by the Appellant to the Respondents is Rs. 11,50,000/-. That payment of the amount is recorded in the registered Agreement for Sale. That despite the amount of Rs. 11,50,000/- being paid, the learned Arbitrator had

still awarded only Rs. 6,50,000/- with interest at the rate of 8% in favour of the Appellant. That the learned Single Judge has erred in withdrawing even the said order made in Appellant's favour. That Respondents had falsely claimed during the course of the arbitral proceedings that no amount was paid by the Appellant to them. If no amount was indeed paid, there is no explanation as to how the registered Agreement could to be executed by the Respondents. The learned Arbitrator had, therefore, correctly directed the refund of amount of Rs. 6,50,000/- paid by the Appellant under the registered document. That Respondent No. 1 never pressed the case of forfeiture of part consideration before the learned Arbitrator. That the said case was directly pressed before the learned Single Judge by Respondent No. 1. That the thrust of the case of Respondent No. 1 before the learned Arbitrator was non-payment of any amount by the Appellant while executing the Agreement. That once the said defence is found to be fallacious, the refund of advance amount together with interest is a relief, which could be granted on the basis of contractual covenants between the parties. That the direction for refund, along with interest, was issued by the learned Arbitrator by acting within the four corners of the Agreement. He would accordingly pray for allowing the Appeal.

8) The Appeal is opposed by Mr. Joshi, the learned counsel appearing for Respondent No. 1. He would submit that the prayer for specific performance has been concurrently rejected by the Arbitral Tribunal as well as by the learned Single Judge and the Appellant has failed to make out any case for interference in such concurrent findings in exercise of jurisdiction under Section 37 of the Act. So far as the refund of amount of Rs. 6,50,000/- along with the interest is concerned, Mr. Joshi would submit that the contract provided for a specific clause for forfeiture of advance payment, which has rightly been taken into consideration by the learned Single Judge. That Respondent No. 1 had

actually not received any amount from the Appellant and reliance on the forfeiture clause is placed only on without prejudice basis. That the Arbitral Tribunal had erroneously traveled beyond the scope of the contract and had granted equitable relief in favour of the Appellant ignoring the covenants of contract. He would, therefore, submit that the learned Single Judge has rightly set aside Direction No. 2 of the Award of the Arbitrator. He would pray for dismissal of the Appeal.

9) Rival contentions of the parties now fall for our consideration.

10) So far as the first aspect of specific performance of the Agreement is concerned, the learned Arbitrator rejected the claim of the Appellant holding that he was not ready and willing to perform his obligations under the Agreement dated 6 October 2003. The said finding was recorded by the Arbitral Tribunal after appreciation of the evidence on record. No case was made out by the Appellant for interference in the said finding in exercise of jurisdiction by the learned Single Judge under Section 34 of the Act. The learned Single Judge has accordingly refused to set aside the award *qua* prayer for specific performance. Jurisdiction of this Court under Section 37 of the Act is co-terminus with the jurisdiction of the learned Single Judge under Section 34 of the Act. In exercise of jurisdiction under Section 37 of the Act, this Court is not expected to act as an appellate Court by re-appreciating the evidence. None of the ground specified in Section 34 of the Act were made out by the Appellant before the learned Single Judge. Therefore, there is no question of making any interference in exercise of appellate jurisdiction under Section 37 of the Act. We, accordingly, uphold both the Arbitral Award as well as the order of the learned Single Judge

rejecting the Appellant's prayer for grant of specific performance of Agreement dated 6 October 2003.

11) Coming to the aspect of refund of part consideration paid by the Appellant, it appears that the Arbitral Tribunal directed refund of amount of Rs. 6,50,000/- to the Appellant, with interest at the rate of 8% per annum from 1 August 2004 till the date of payment. It appears that Respondents had taken a stand before the learned Arbitrator that no amount was paid by the Appellant to the Respondents. After appreciating the evidence on record, the learned Arbitrator has held that payment of amount of Rs. 6,50,000/- (Rs. 5,00,000/- in cash and Rs. 1,50,000/- by cheque) has been proved by the Appellant. The factum of payment of Rs. 6,50,000/- by the Appellant to Respondent No. 1 has not been disturbed by the learned Single Judge. However, the learned Single Judge has still proceeded to set aside the award to the extent of direction for refund of amount of Rs. 6,50,000/-. This was done by the learned Single Judge by taking into account forfeiture clause specified in the Agreement dated 6 October 2003. The relevant clauses of the Agreement dated 6 October 2003 read thus :-

"If the sale be not completed due to any willful default on the part of the Vendor the Purchaser shall be entitled (a) to require specific performance by the vendor of this Agreement or (b) to payment by the Vendor of interest on the said earnest money or deposit at the rate of 18% per annum and all costs, charges and expenses incurred and all loss and damages sustained by the Purchaser in addition to the return by the vendor of the said earnest money or deposit and other amount.

If the Purchaser be not completed due to any willful default on the part of Purchaser, the Vendor shall be entitled (a) to require specific performance of this Agreement by the Purchaser and to claim all costs charges and expenses incurred by the Vendor or (b) to forfeit the earnest money or deposit and claim all loss and damages suffered and to the payment of all costs incurred by the Vendor."

12) Thus, the contract specifically provided for forfeiture of earnest money in the event of willful default on the part of the

Appellant. The learned Arbitrator had apparently ignored the said contractual clause and had erroneously directed refund of the said amount to the Appellant, contrary to the contract clause. The Arbitral Tribunal is a creature of Agreement and must act within the four corners of the Agreement. The Arbitrator does not have jurisdiction to pass order in equity and must resolve disputes between the parties strictly in accordance with the contractual clauses. It appears that the learned Arbitrator had completely ignored the above quoted clause providing for forfeiture of the advanced payment. In our view, therefore, the learned Single Judge has rightly taken into consideration the forfeiture clause in the Agreement while criticizing the Arbitral Tribunal in applying the principles of equity by holding that the parties had not expressly authorized the Arbitral Tribunal to decide the matter in equity under Section 28(2) of the Act. The learned Single Judge has rightly held that the Arbitral Tribunal had transgressed the jurisdiction which he had derived as per the terms of Agreement dated 6 October 2003. Since Direction No. 2 in the Award was issued in ignorance of forfeiture clause in the contract, a clear case for setting aside that direction under Section 34 of the Act was made out. This part of the Arbitral Award was clearly severable from the good part of rejecting the relief of specific performance. The order passed by the learned Single Judge allowing Arbitration Petition (L) No. 24217 of 2022, therefore, does not warrant any interference in exercise of appellate jurisdiction under Section 37 of the Act.

13) We, therefore, do not find any valid reason to disturb the order passed by the learned Single Judge. The appeal filed by the Appellant is devoid of merits. It is accordingly **dismissed**.

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signed by
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[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]