

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

COMMERCIAL ARBITRATION PETITION NO. 377 OF 2024

Ashok Himmatbhai Patel

...Petitioner

Versus

Meera Himmatbhai Patel & Ors

...Respondents

Mr. Rashnin Khandekar, a/w Pranav Nair, i/b Amit Tungare, Jill Rodricks for the Petitioner.

Mr. Mayur Khandeparkar, a/w Kiran Jain, Amrut Joshi, Duj Jain, Krishma Shah, Sagar Satam, Yezad i/b Kiran Jain & Co., for Respondent Nos.1 & 2.

Mr. Rohan Savant, a/w Dipen Furia, i/b M/s. Shah & Furia Associates, for Respondent No.3.

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON: MARCH 6, 2025

PRONOUNCED ON: OCTOBER 7, 2025

JUDGEMENT :

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) challenging an order dated August 28, 2023 passed under Section 17 of the Act, essentially directing that *status quo* be maintained in respect of certain properties.

2. The Petitioner, Ashok Himmatbhai Patel (“**Ashok**”), Respondent No. 2, Raj Himmatbhai Patel (“**Raj**”) and Respondent No. 3, Prakash Himmatbhai Patel (“**Prakash**”) are siblings and born to Respondent No. 1, Meera Himmatbhai Patel (“**Mother**”) and her late husband Mr. Himmatbhai Patel (“**Father**”), who had headed the family. Raj and Prakash assert enforcement of a Family Settlement dated January 21, 2013 (“**Family Settlement**”), which has an arbitration agreement.

3. The Mother and Raj filed a petition under Section 9 of the Act (Commercial Arbitration Petition (L) No. 36333 of 2022), seeking certain reliefs in the form of protection in respect of certain properties under the Family Settlement. Ashok denied the continued existence of the Family Settlement. He would contend that the parties had moved on and terminated the Family Settlement by oral amendment. He would point to certain distribution of assets at variance with what is set out in the Family Settlement; and the use of the plural term “family arrangements” in correspondence to contend that there are more than one agreements. Ashok would also contend that the Section 9 Petition was a product of collusion between Raj and Prakash.

4. The Section 9 Petition stood converted into an application under Section 17 of the Act and an Arbitral Tribunal was appointed to adjudicate disputes and differences between the parties. The Impugned Order has been passed by the Learned Arbitral Tribunal in disposal of the Section 17 Application.

5. The Patel Family evidently had a huge bouquet of assets and various business entities covered by the Family Settlement. A number of reliefs were sought in the Section 9 Petition (21 in number) running into nine pages. The Learned Arbitral Tribunal has examined the contentions of the parties and has focused on only the reliefs pressed for – restraint in relation to three properties and a direction about ensuring absence of default that could lead to enforcement of a mortgage over one of these properties.

Impugned Order:

6. The reliefs granted by the Learned Arbitral Tribunal require that, pending hearing and completion of the arbitration proceedings, the Petitioner maintain *status quo* as obtaining on the following properties, with an injunction against creation of any third party rights or parting with or alienating the following properties:

(i) Bungalow No.15/A and 15/B, Ground floor, Vaishnav Villa Co-operative Housing Society Ltd., Thakur Complex, Kandivali (East) Mumbai – 400101 – Prayer Clause (a)(i) in the Section 17 Application;

(ii) Sirana Bungalow, Pali Dist Rajasthan – Prayer Clause (a)(vii) in the Section 17 Application; and

(iii) Survey no.354, Hissa No.2, Juichandra Naigaon, Thane – Prayer Clause (a)(viii) in the Section 17 Application.

7. As regards Prayer Clause (f), which was for a direction to Ashok to effect default-free servicing of the loan for which the bungalow covered by Prayer Clause (a)(i) was mortgaged, the Learned Arbitral Tribunal found that the mortgage was meant to secure a loan taken by Satyam Embroideries Systems LLP, and therefore directed all the parties to ensure that the loan is properly serviced by the partnership without posing any impediments in servicing the underlying loan.

Analysis and Findings:

8. I have heard the Learned Counsel representing the parties at length and have also perused the record with their assistance and the written notes on arguments submitted by them.

9. Essentially, Ashok has contended that implementing the Family Settlement would have entailed serious incidence of Stamp Duty and therefore the parties had verbally agreed to move away from it. According to Ashok, it was agreed that the assets would be held in the respective names of the parties and it would be better for parties to execute release deeds or gift deeds wherever required. The distribution of certain assets that have happened are not consistent with the Family Settlement, he would contend, to indicate that Raj and Prakash have accepted assets not covered by the Family Settlement, which would in turn indicate that the Family Settlement had been abandoned.

10. Ashok would strongly pitch his case on the absence of readiness and willingness to perform the very same Family Settlement on the part of Prakash, Raj and the Mother. The upshot of the contention is that Prakash and Raj not being ready and willing to perform the Family Settlement, they are not entitled to seek specific performance, and therefore, cannot be aided with any protective relief on the assets covered by the Family Settlement.

11. It must be remembered that the scope of Section 17 of the Act is to enable the Learned Arbitral Tribunal to provide for such holding arrangement and protective measure that, in the opinion of the Learned Arbitral Tribunal, would present a means of preserving and protecting the subject matter of the arbitration agreement. It is trite law that the Learned Arbitral Tribunal is the best judge of the situation and determination of what measures are felt necessary as being protective of the subject matter in question. The Learned Arbitral Tribunal is the master of the evidence and the best arbiter of the quality and quantity of evidence, even at the interim stage to make a judgement call on the nature and scope of protective measures felt necessary. It is in this context that the findings of the Learned Arbitral Tribunal and the manner of attack to the Impugned Order must be assessed.

12. At the time the Impugned Order was passed, the Learned Arbitral Tribunal felt it appropriate to make a limited interlocutory intervention as summarised above. The parties have evidently presented detailed and copious contentions about the Family Settlement and the materiality of the deviations from it. Even Ashok's own case for the deviations appears to be that the scale of incidence of stamp duty was heavy and therefore the parties decided to mould their approach. This would still not necessarily mean an abandonment of the Family

Settlement but would mean a modification of the means of achieving the separation. Whether there was a material deviation on substance and how it can be discerned, is something the Learned Arbitral Tribunal has left for later after evidence is gathered. No fault can be found with this approach.

13. Whether the claim of an oral novation of the Family Settlement is made out by Ashok is clearly left open by the Learned Arbitral Tribunal, which has taken a view that a limited protection of the subject matter would meet the ends of justice and appropriateness for conduct of the arbitration proceedings.

14. The Learned Arbitral Tribunal's confidence is not inspired by Ashok's submission that the Respondents have used the term "family arrangements" (in plural) in three letters written by them. The Learned Arbitral Tribunal has taken a view that such an argument cannot turn the needle in favour of holding that there is no singular family arrangement, which indicates abandonment of the Family Settlement. The Learned Arbitral Tribunal has stated that the letters have been written loosely and cannot be analysed through the microscope of detailed grammatical analysis.

15. Indeed, the Learned Arbitral Tribunal found some deviation in the distribution of assets but has found that such deviations are not proof of an oral novation. This is attacked on behalf of Ashok as being fatal to the Impugned Order – contending that once it is acknowledged that there has been a deviation from the Family Settlement, the Learned Arbitral Tribunal could have never held that there has to be specific performance of that very Family Settlement. I have also examined the summary of deviations relied upon by Ashok. They relate to just a few instances of deviation and that by itself may not be conclusively determinative (and that too at an interim stage) of abandonment of the Family Settlement, which evidently covers a much vaster bundle of assets and properties.

16. Ashok finds fault with the Learned Arbitral Tribunal for “kicking the can down the road” without rendering a firm finding of a strong *prima facie* case to grant relief. However, the Learned Arbitral Tribunal has found that the injury that would be occasioned to the family members other than Ashok would be far greater if the preservation is not granted, as opposed to the injury to Ashok if the preservation is granted. The Learned Arbitral Tribunal found that if immovable property is frittered away without preservation, its loss cannot be compensated by money. This has been attacked by Ashok on

the premise that balance of convenience is irrelevant without a *prima facie* case.

17. I am unable to agree with such contentions. The Learned Arbitral Tribunal has felt it fit to take the specific measure as the Learned Arbitral Tribunal considered necessary for protection and preservation of the subject matter of the arbitration agreement, after considering the situation at hand. The Learned Arbitral Tribunal has felt that more evidence would need to be forthcoming to demonstrate abandonment of the Family Settlement. In my opinion, this is not exceptionable. The Learned Arbitral Tribunal's observation that some properties have indeed not been distributed in the manner contemplated cannot undermine and render it impossible for the Learned Arbitral Tribunal to take any protective or preservative measure whatsoever pending conduct of the arbitration proceedings.

18. One has to give the Learned Arbitral Tribunal a reasonable play in the joints to provide for an interim measure that does not damage the subject matter of the arbitration agreement. By noticing that there have been some deviations, the Learned Arbitral Tribunal is not disentitled from taking any protective measure whatsoever.

19. Indeed, the scope of jurisdiction under Section 37 of the Act is an appellate jurisdiction, and is an extension of the jurisdiction under Section 17 of the Act. However, it is well settled law that even while an appeal is to be regarded as a continuation of the original proceeding, the appellate Court, when reviewing the exercise of discretion by an Arbitral Tribunal, would be well guided by the principles set out by the Supreme Court in ***Wander vs. Antox***¹. This Court may interfere only if there is something perverse or implausible in the exercise of discretion. I am of the view that the threshold of perversity or implausibility has not been met in this case, to warrant an intervention under Section 37 of the Act, simply because the Impugned Order is not inconsistent with the objective underlying Section 17 of the Act and represents a reasonable best judgement of the Learned Arbitral Tribunal.

20. Essentially, the Learned Arbitral Tribunal has observed the respective contentions of the parties. The Learned Arbitral Tribunal has indeed come to a clear view that there is no strong *prima facie* case of abandonment or novation of the Family Settlement. At the interim stage, the Learned Arbitral Tribunal is not to be expected to render firm findings on readiness and willingness to perform a contract, which is what is sought by Ashok, with copious reliance on known case law about

¹ *Wander Ltd. Vs. Antox India (P) Ltd. – 1990 Supp SCC 727*

the element of readiness and willingness in cases of specific performance. Even in these proceedings, a plethora of case law on known principles of the importance of readiness and willingness has been pressed into service. Having examined that the agreement in question is a family arrangement, the Learned Arbitral Tribunal has taken a *prima facie* view on the damage that could be suffered by the subject matter of the arbitration agreement and has formulated the protective measure that the Learned Arbitral Tribunal believes would guard against the potential damage to it, balancing competing interests. In doing so, the Learned Arbitral Tribunal has examined which party would suffer more injury, if any, from the restraint that the Learned Arbitral Tribunal intended to impose.

21. Moreover, it is also settled law well declared by the Supreme Court in a long line of judgements that family arrangements stand on a special footing in the eyes of law and the Courts would do their utmost to preserve and enforce them. This cannot be lost sight of in arbitration proceedings either. Way back in 1973, the Supreme Court stated the following in ***Shanmugham Pillai***², which has been followed time and again over the years:

² *S. Shanmugam Pillai vs. K. Shanmugam Pillai* – (1973) 2 SCC 312

12. If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.

13. Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

[Emphasis Supplied]

22. Likewise, it is also well known that in the implementation of family arrangements, fiscal implications arise and the parties may re-adjust their affairs without intending to erode the *substratum* of the family arrangement. In this context, the contention of abandonment is an extreme one. Any and every deviation in distribution of a bouquet of assets would not mean that the parties have abandoned a family arrangement and have decided to risk fresh disharmony and litigation. The Learned Arbitral Tribunal's findings have to be seen in this light. To quote from **Modi**³, the Supreme Court held as follows:

52. *Group A also contends that there is no merit in the challenge to the decision of the Chairman of IFCI which has been made binding under the Memorandum of Understanding. The entire Memorandum of*

³ *KK Modi vs. KN Modi* – (1998) 3 SCC 573

Understanding including clause 9 has to be looked upon as a family settlement between various members of the Modi family. Under the Memorandum of Understanding, all pending disputes in respect of the rights of various members of the Modi family forming part of either Group A or Group B have been finally settled and adjusted. Where it has become necessary to split any of the existing companies, this has also been provided for in the Memorandum of Understanding. It is a complete settlement, providing how assets are to be valued, how they are to be divided, how a scheme for dividing some of the specified companies has to be prepared and who has to do this work. In order to obviate any dispute, the parties have agreed that the entire working out of this agreement will be subject to such directions as the Chairman, IFCI may give pertaining to the implementation of the Memorandum of Understanding. He is also empowered to give clarifications and decide any differences relating to the implementation of the Memorandum of Understanding. Such a family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed. The respondents may make appropriate submissions in this connection before the High Court. We are sure that they will be considered as and when the High Court is required to do so whether in interlocutory proceedings or at the final hearing.

[Emphasis Supplied]

23. Seen in this light, what the deviations are, whether they impact the substratum of the Family Settlement, or whether they only readjust the manner of parting ways and that too in some facets of the wider bargain, are all elements of eventual adjudication. Ashok himself alludes to variations being linked to minimising the incidence of Stamp Duty, which cannot be held to be an erasure of the substratum of the Family Settlement.

24. The Learned Arbitral Tribunal's approach is reasonable, fair and plausible, and in my opinion, does not call for interference. As stated earlier, unless there is anything perverse in what the Learned Arbitral Tribunal has held, the law declared in ***Wander vs. Antox*** must be remembered. The following extract would be instructive:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different

from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

[Emphasis Supplied]

25. The principle articulated in *Wander vs. Antox* has been followed and reiterated in multiple judgements. In the matter in hand, there is no reason to bring into question the reasonableness of the Impugned Order to make any intervention under Section 37 of the Act. Accepting the views canvassed on behalf of Ashok would require this Court to substitute the Learned Arbitral Tribunal's reasonable view with another competing reasonable view, which is wholly unnecessary and impermissible.

26. For the aforesaid reasons, the Petition is ***dismissed***, along with all attendant interim applications, if any.

27. Before parting, it may also be noted that the Impugned Order was passed way back in August 2023. This Appeal has been on the

docket of this Court since the challenge made in September 2023. A Learned Single Judge of this Court, by an order dated September 29, 2023, had permitted Ashok to pursue permissions for development of the land referred to in the third property listed above, without claiming equities, merely by such permissions being granted. Ashok was also meant to keep the other parties informed about such developments and furnish copies of the relevant documents to them so that they are well aware of the developments. As of now, should there have been any developments on this front, the parties would be expected to have parity of information in this regard, and they may well address the Learned Arbitral Tribunal. Since it is now two years since the Impugned Order was passed, it is hoped that the parties will co-operate and assist the Learned Arbitral Tribunal in completing the proceedings at the earliest.

28. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]