IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION NO. 46 OF 2025

Shashikant Chimanlal Makwana & Ors ...Petitioners

Versus

Pramod Karunakar Shetty & Anr ...Respondents

Mr. Mayur Khandeparkar, *i/b Sanket Mungale, for the Petitioners.*

Advocate for Respondent appeared but not given appearance.

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : FEBRUARY 10, 2025

PC :

1. This Petition under Section 9 of the *Arbitration and Conciliation Act, 1996* (“***the Act***”) is coming up for the first time today. Learned Counsel 0n behalf of the Petitioners seeks urgent interlocutory reliefs and files a service affidavit, which demonstrates that the Respondents have been served with the proceedings and had been informed that the matter is listed today.

2. The disputes and differences between the parties relate to the conduct of a business by a limited liability partnership, which is Respondent No.2 in this proceeding. There are four partners who have executed the LLP Agreement dated March 24, 2023 (“***the Agreement*** ”). Respondent No.1 is the partner against whom reliefs are sought by the

other three partners, who are Petitioners in the present proceedings.

3. It is seen from Clause 8.2 of the Agreement that Respondent No.1 is required to ensure that the property in question is freely available for use to the LLP, without any hindrance on his part. Likewise, it is seen that Clauses 4.3 and 4.4 of the agreement contain devolution of responsibilities between two partners namely, Shashikant Makwana (Petitioner No.1) and Pramod Shetty (Respondent No.1). Learned Counsel for the Petitioners submits that the responsibility of Respondent No.1 as envisaged by the Agreement is to ensure licenses and permits for conduct of the business of Respondent No.2- LLP are applied for and are kept renewed timely. The operational responsibility for running the restaurant business conducted by the LLP is with Petitioner No. 1.

4. Clause 7.5 of the Agreement also requires Respondent No.2- LLP to pay compensation to Respondent No.1 towards discharge of a sum of Rs.55 Lakhs payable by Respondent No.1 to creditors in respect of trade liabilities incurred prior to the date of execution of the Agreement. The partners have an arrangement, according to the Petitioners, that they would make monthly drawings of Rs. 3 Lakhs subject to settlement of accounts at the end of the year.

5. Clause 15 of the Agreement contains the list of matters that requires unanimous consent of all partners, and winding up of the LLP is provided for as such a matter, in Clause 15.1.

6. Evidently, the disputes and differences are brewing between the parties. It is seen that by a letter dated January 7, 2025, Respondent No. 1 has issued a notice to the three Petitioners that the Agreement shall stand terminated with a fifteen-day notice. Learned Counsel for the Petitioners submits that Respondent No. 1 has physically shuttered down the premises and once taken control of the cash counter and taken away cash from the till. These instances have led to a First Information Report dated December 7, 2024 being lodged against Respondent No.1 in connection with his physical interference with the conduct of the business of the Respondent No. 2-LLP.

7. In these circumstances, Learned Counsel for the Petitioners seeks urgent interlocutory reliefs and also submits that there had been two instances of Respondent No.1 physically entering the business premises and taking access to the cash available at the cash counter, and also downing the shutters of the Respondents.

8. I am satisfied that there is an Arbitraiton Agreement among the parties – Clause 17 of the Agreement, found at Page 54 of the Petition. There are specific obligations and rights in the Agreement, which the Petitioners are entitled to enjoy. Respondent No. 1 has contractually assured that the LLP would be able to enjoy the premises without hindrance. There is also evident allocation of responsibilities and it is not envisaged that the Respondent No. 1 shall run the business in his sole control. While winding up of the LLP requires unanimous consent, it is evident that Respondent No. 1 has recorded his intent to terminate the Agreement. Besides, as a form of organisation, LLP is a

body corporate with an independent legal existence, unlike a partnership firm.

9. In these circumstances, a case has been made out for some limited but urgent ad-interim reliefs, while giving Respondent No.1 one more opportunity to present his say. Consequently, ad-interim reliefs shall follow in terms of prayer clauses (a) and (b) which read thus:-

> *(a) That pending the hearing and final disposal of the Arbitration Petition, this Hon'ble Court be pleased to pass an order of temporary injunction restraining the Respondent No.1, his agents, servants, hirelings, goons, relatives or any other person or persons claiming through or under him, from dispossessing the Petitioners from the said premises viz. Shop No.1, Ground Floor, Adam Hotel 1431147, Wadia Street, Near Tardeo Bus Terminal, Tardeo, Mumbai 400034, admeasuring 950 sq. ft. or thereabout without following due process of law.*
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> *(b) That pending the hearing and final disposal of the Arbitration Petition, this Hon'ble Court be pleased to pass an order of temporary injunction restraining the Respondent No.1, his agents, servants, hirelings, goons, relatives or any other person or persons claiming through or under him, from interfering, intermeddling, obstructing, causing nuisance of whatsoever nature at the said premises viz. Shop No.1, Ground Floor, Adam Hotel 1431147, Wadia Street, Near Tardeo Bus Tenninal, Tardeo, Mumbai 400034, admeasuring 950 sq. ft. or thereabout and in the daily and regular working of the said restaurant;*

10. Learned Counsel for the Petitioners undertakes that his clients shall invoke arbitration no later than one week from the date on which this order is uploaded on the website of this Court. Should there be no consensus with Respondent No.1 on identification of an arbitrator, he shall file an Application under Section 11 in accordance

with the Act within a period of two weeks from the date on which this order is uploaded on the website of this Court.

11. Consequently, in addition to the ad-interim reliefs granted above, the following directions are issued:-

a) The Petitioners shall serve a copy of this order on Respondent No.1 and file an affidavit demonstrating service;

b) The Respondent No.1 shall ensure that he adheres to the obligations arising out of the ad-interim reliefs granted above;

c) List the matter under the caption ***"Ad-Interim Reliefs-Section 9"*** on ***March 3, 2025,*** on which date the Respondent No.1 will have an opportunity to present his say as to why the reliefs granted today ought to be varied, modified or vacated.

12. 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.]