(2015) 07 BOM CK 0086

In the Bombay High Court

Case No : Arbitration Application Nos. 94 and 95 of 2013 and Arbitration Application (L) No. 338 of 2013

Kantilal B. Shah and Others — APPELLANT

Vs

Bharati Ketan Shah and Others — RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 13, 14, 15

Citation : (2015) 07 BOM CK 0086

Hon'ble Judges : A.K. Menon, J

Bench : Single Bench

Advocate : Sanjay Jain and Krishna Raja i/b. Mahesh Thaker, for the Appellant; T.N. Subramanian, Senior Advocate, Rajesh Shah, Tanvi Gandhi, Zankhana Mehta, Chetan Yadav and Nupur Desai instructed by Markand Gandhi and Co., Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Menon, J—This common order disposes of the above three Arbitration Applicants. The Applicant has approached this Court for seeking appointment of a sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. The Respondents on the other hand opposing the application contending that arbitration proceedings are already underway and the Arbitrator was appointed by consent of the parties concerned, including the consent of the Applicant herein.

2. It will be necessary to deal with the facts in brief prior to entering upon the main controversy between the parties. The facts are as under:--

"The Applicant and the Respondents are relatives. One Bhikalal Shah had two sons by name Kantilal Shah and Anil Shah. Kantilal Shah is married to Sudhaben and Anil Shah is married to Kantaben respectively. Both Kantilal Shah and Anil Shah had sons namely Deepak and Ketan who were married to Heena and Bharati respectively. The Family Tree can conveniently be shown as under:--

3. The family members were engaged in several partnership businesses. These present applications pertain to three such firms namely, Prime Developers, Conex Metals (International) and Conex Metals (India). For the sake of convenience, the facts in Arbitration Application No. 94 of 2013 can be considered. In the case of M/s. Prime Developers, which is the subject matter of Arbitration Application No. 94 of 2013, the Firm was originally registered on 23rd July, 2001 pursuant to a Deed of Partnership dated 18th January, 2005. Originally, the partnership consisted of Kantilal Bhikalal Ladhani, Hiten Anil Shah and Bharati Ketan Shah. Vide a Deed of Retirement dated 20th November, 2004, the aforesaid Hiten Anil Shah retired from the firm and Bharti Ketan Shah was admitted to the firm as a partner with effect from 31st October, 2004. The partnership business was that of construction contractors, builders, trading, and dealing in building material. Clause 21 provided for arbitration in case of disputes. Clause 21 is reproduced below for ease of reference:--

"21. Any dispute regarding this partnership shall be referred to an arbitration and said arbitration shall take place in accordance with the law of arbitration for the time being in force."

4. It is mentioned that the partner Kantilal Bhikalal Shah represented one side of the family and the other partner was the wife of Ketan Shah. Therefore, the two branches of the family were represented by these two partners.

5. In Arbitration Petition No. 95 of 2013, the Applicant is Mr. Deepak Kantilal Shah and the Partnership Firm is Conex Metals (International). The partners of Conex Metals (International) Deepak Kantilal Shah and Ketan Anil Shah represented two branches of Bhikalal Shah family. The Partnership Deed of Conex Metals (International) is effective from 4th April, 2002. The partnership is engaged in the business of manufacturing of engineering goods, electrical accessories, brass articles, components and allied activities. This Partnership Deed also contains an Arbitration Agreement in clause 26, which is reproduced below:--

"26. Any disputes and differences and questions whatsoever which shall either during the partnership or afterwards arise between the partners or their respective representatives or between any partner and the representative of any other partner touching this indenture or thing herein contained or any account of assets, debts or liabilities to be made hereunder or as to any act, deed or omission of any partner as to any other matter in any way relating to the partnership business or the affairs thereof or the rights, duties, or liabilities of any person under this Indenture shall be referred to the arbitrations. Such Arbitration shall take place in accordance with and subject to the provisions of Arbitration Conciliation Act, 1996 or statutory modification thereof for the time being in force. "

6. The third Arbitration Application is yet to be numbered and bears Lodging No. 338 of 2013. The Applicant is Sudhaben Kantilal Shah and the Partnership Firm is

Conex Metals (India). The partner is Kantaben wife of Anil Shah. Thus in this partnership also both the branches of Bhikalal Shah are represented. The Partnership Deed in the present case is not annexed to the application. A statement is made that the Applicant does not possess the original Partnership Deed nor a copy thereof. The Applicant seeks to invoke the Arbitration Agreement contained in the Partnership Deed. As far as Arbitration Petition (L) No. 338 of 2013 is concerned, it clearly is not maintainable for the absence of a written agreement between the parties. The Applicant therein has not been able to produce the original arbitration agreement or a certified copy thereof. Despite this obvious defect in the application and failure to produce the original Arbitration Agreement and/or a copy thereof as mandated by the Act, while disposing of this application, the very fact that the Letter of Reference contemplates reference of dispute in relation to Conex Metals (India) as well there is no question of entertaining this application for reasons already spelt out viz. that a valid reference has been made vide the Letter of Reference.

7. A common thread that binds all the parties in the above applications is the fact that they are family concerns of family members of Bhikalal Shah. Various family members, including the Hindu Undivided Family having invested in various firms and the businesses. They have decided that the two branches of the family which were represented by Ketan Shah (son of Anil Shah) and Deepak Shah (son of Kantilal Shah) represent each branch will bring about a division of the properties. Their houses situated in the native place as well as all the ornaments have already been divided amongst their family members. However, certain disputes and differences arose amongst the members of the family regarding the division and valuation of the business and assets which they decided to refer to the Arbitrator.

8. As a result, Ketan Shah decided to refer the differences of opinion and the dispute relating to ascertainment of value of the assets and quantum of liability and give a decision about the dues of each branch of the family and accordingly, the parties made a reference in writing to one Mr. V.C. Shah, the family Chartered Accountant by a Letter of Reference dated 1st August, 2012 (LOR). This Letter of Reference is common in all three Arbitration Applications. It is the case of the Applicant in each of these matters that the Letter of Reference stipulates that the arbitration will be completed and Award will be passed within 60 days. The Applicant''s grievance is that the period of 60 days has expired and the mandate of the Arbitrator has terminated. According to the Applicant, the Arbitrator did not start the arbitration proceedings and he made certain demands including a demand to deposit Rs. 1 crore as security deposit from each party which were refundable with interest on completion of the arbitral proceedings. It is alleged that the Arbitrator did not follow the time frame and failed and neglected to complete the arbitration proceedings within the time stipulated. It is further alleged that during the pendency of the arbitration Mr. V.C. Shah represented to the Applicant that he ought to execute certain agreements and deeds in respect of the Partnership Firm and further represented that the other

members of the family would be executing similar agreements and that the documents so executed were to remain in his custody and possession till the passing of the Award and they were to be released only in terms of the Award.

9. It is alleged that the Applicant was made to sign on the undated Retirement Deed and Deed of Admission of Partnership of Respondent No. 2 firm and he handed over the signed documents to the Arbitrator. However, it appears that the Arbitrator handed over possession of the documents not only to Respondent No. 1 but also to third parties. Therefore, there was breach of confidence leading to allegations of bias in favour of Respondent No. 1 and his family members. The Applicant alleges that the proceedings were misconducted and the mandate of the Arbitrator stood terminated. The Applicant sent a letter on 16th November, 2012 addressed to the Arbitrator alleging bias and partiality and of misconducting the arbitration proceedings. Thereafter, the Applicant''s sent an Advocate''s letter dated 30th November, 2012 to Respondent No. 1 seeking dissolution of the firm and invoking the arbitration clause. It also appears that the Appellant issued a public notice dated 20th December, 2012 declaring the dissolution of Partnership Firm in Times of India, Gujarat Samachar and also Nav Shakti setting out the facts of dissolution and having invoked arbitration.

10. Mr. Jain, learned counsel for the Applicant submitted that the letter dated 1st August, 2012 under which reference is made to Mr. Shah no longer holds good. Furthermore, he submits that the mandate of the Arbitrator stood terminated on the expiry of 60 days. Relying on the Letter of Reference, Mr. Jain argued that although the basic decision to separate has been taken by the two branches of the family and although properties in the native place and the ornaments were already divided between the parties, what remained to be done was to ascertain the value of assets besides liabilities and to decide upon the dues of each side. He further submitted that the Arbitrator was bound to deliver the Award within 60 days which he has failed to do, therefore, the Applicant is compelled to issue a notice of dissolution of the firm and invoking the arbitration clause 21. He submitted that the Arbitrator had behaved in a partial manner and has misled the parties as a result of which after the Arbitrator entered upon the reference and all the parties, including the Applicant participated in the reference, the Applicant and his son Deepak Shah and wife Heena Shah challenged the authority of the Arbitrator questioning his independence and impartiality, alleging misconduct. While so challenging the jurisdiction of the Arbitrator, the Applicant contended that the Arbitrator has not delivered the Award in time. The Arbitrator was acting in dual capacity, that of the Auditor of the family business as well as Arbitrator. He had not held a meeting of the parties nor had he formally entered into the reference nor replied any Letter of Reference. He had at that time demanded Rs. 1 crore to him and demanded further sum of Rs. 6 crores by threatening the Applicant to pass order in favour of the other branch of the family. Mr. Jain also contended that the terms of reference were one sided, the Arbitrator had illegally obtained signatures on various deeds of confirmation and had finalised accounts and audited in his capacity as an Auditor of the firm and in

collusion with the other branch of the family and in absence of a representative of the Applicant''s branch.

11. Mr. Jain then referred to the letter dated 30th November, 2012 whereby the Applicant informed the Respondents in the Partnership Firm and the partner Bharati Shah represented by the Anil Shah branch of the family that the Arbitrator was biased for reasons set out therein and the Applicant, therefore, purported to dissolve the firm and appoint Mr. Bhupendra Shah as the sole Arbitrator as per clause 21. In the circumstances, Mr. Jain submitted that the present application is maintainable and the requirement of Section 11 of the Arbitration and Conciliation Act stands complied with.

12. Mr. Jain relied upon the observations of the Supreme Court in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, AIR 2006 SC 450 : (2005) 3 ARBLR 285 : (2005) 128 CompCas 465 : (2006) 2 CompLJ 7 : (2005) 5 CTC 302 : (2005) 9 JT 219 : (2005) 9 SCALE 1 : (2005) 8 SCC 618 : (2006) 1 UJ 156 : (2005) AIRSCW 5932 : (2005) 7 Supreme 610 . and drew our attention to paragraph 108 and submitted that Section 16 (1) does not merely enable the Arbitral Tribunal to rule on its own jurisdiction and submitted that the Court while exercising jurisdiction under Section 11(6) exercises judicial powers and has a right to decide the preliminary aspect as to the existence of a valid arbitration agreement or otherwise a right to claim the existence of the condition to exercise the powers of the Court and qualification of the Arbitrator. Mr. Jain then relied upon the decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd., AIR 2009 SC 170 : (2008) 3 ARBLR 633 : (2011) 2 CompLJ 486 : (2008) 10 JT 448 : (2008) 152 PLR 709 : (2008) 12 SCALE 654 : (2009) 1 SCC 267 . and submitted that when a contract contains an arbitration clause and any dispute in respect of the said contract is referred to arbitration without the intervention of the Court, the Arbitral Tribunal can decide, whether there is an arbitration agreement, whether the arbitration agreement is valid and whether the contract in which the arbitration clause is found is null and void and if so whether the invalidity extends to the arbitration clause as well. If the Respondent before the Tribunal contends that the contract has been discharged on account of the claimant accepting payment made by the Respondent in full and final settlement.

13. Mr. Subramanian, learned Senior Advocate appearing on behalf of Respondent No. 1 on the other hand submitted that the present application is an abuse of process of law and, therefore, not maintainable as the arbitration is already underway and that the application is filed to wriggle out of the Letter of Reference of 1st August, 2012. Mr. Subramanian submitted that the Letter of Reference supersedes the Arbitration Agreement. He further referred to the Affidavit in Reply of Bharati Ketan Shah, Respondent No. 1 dated 22nd March, 2013 wherein his client states that the arbitration covers all disputes relating to the proceedings and sets out that the mandate given to Mr. V.C. Shah continues. He, therefore, prays for rejection of the Applications as they are misleading and

vexatious. It is contended by Mr. Subramanian that the Applicant had already retired from the Partnership firm and had executed a Deed of Retirement whereby he had retired from the firm. According to Respondent No. 1, by the Deed of Admission dated 2nd April, 2012, one Mr. Suryakant G. Shah came to be admitted as a partner. By a Deed of Retirement dated 3rd April, 2012, the Applicant retired from the Partnership firm. That after the retirement a fresh Deed of Partnership was executed between Respondent No. 1 and Mr. Suryakant Shah. The Applicant has, therefore, ceased to be a partner of M/s. Prime Developers from 3rd April, 2012 and, therefore, there was no question of invoking the arbitration clause in the said matter or dissolving the firm.

14. Mr. Subramanian then submitted that there is no confusion as regards the Arbitration Agreement in Arbitration Application Nos. 94 of 2013 and 95 of 2013 but in so far as Arbitration Application (L) No. 338 of 2013 is concerned, he submits that there is no Arbitration Agreement produced (neither original nor copy) and therefore, the Application is not maintainable. He submitted that Letter of Reference is common and there is no dispute that the subject matter of the reference is yet to be adjudicated upon in arbitration proceedings. He submitted that arbitration had a limited scope. The Arbitrator was entitled to decide the values of the assets which had not been decided by and between the parties and which led to the differences of opinion between the parties. As a result, the disputes were referred to arbitration.

15. Much of the affidavit-in-reply is devoted to the merits of the matter which need not be presently detain us. As regards the allegations of misconduct, it is submitted that the Arbitrator had called for deposits to be made in order to deal with various liabilities which amounts are still lying deposited with the Arbitrator and the proceedings are still pending. Mr. Subramanian submitted that the Letter of Reference does not specify that the Award must be passed within 60 days, therefore, it is not mandatory that the Arbitrator should have made an Award within 60 days. He further submits that the Applicant is seeking to take advantage of his own wrong, inasmuch as, he had failed to supply the Arbitrator with the documents that he was required to provide. Apropos the allegations that the Arbitrator had misrepresented facts and got executed some documents, Respondent No. 1 submitted that after the execution of the Deed of Retirement, the Applicant withdrew his capital and investment in the said firm M/s. Prime Developers as also the investments and loans of the family members of Kantilal Shah between the period March, 2012 to May, 2013 and that the allegations were, therefore, dishonest. Initially, there was no denial of the contention that the Applicant had withdrawn the capital investment in the firm and he merely states that accounts have not been "settled". However, later on, in paragraph 11(e) of the affidavit in rejoinder, there is a denial that Kantilal Shah withdrew any amount from the partnership concern. These are in my view aspects to be considered by the Arbitrator.

16. Mr. Subramanian further submitted that clauses 21 & 16 of the two

Partnership Deeds cease to operate as the Letter of Reference supersedes the arbitration clauses. He submits that all the parties concerned agreed to refer all disputes in view of the fact that a basic decision has been taken to separate. He further submitted that the scope of the reference was clearly spelt out in the Letter of Reference and the subject matter of arbitration is very clearly spelt out in detail. He reiterated that the Applicant has retired from the partnership. In the circumstances, having retired there is no question of invoking the arbitration clause. He further submitted that there is no provision to terminate the mandate of the Arbitrator in the manner sought to be done. He submitted to the objection to the Arbitration Application is duly dealt with by para-wise response in the affidavit filed. Mr. Subramanian, therefore, submitted that no case whatsoever has been made out to entertain the present application and it is not maintainable and is liable to be rejected. Mr. Subramanian relied upon the decision in the case of Newton Engineering and Chemicals Ltd. Vs. Indian Oil Corporation Ltd. and Others, (2006) 4 ARBLR 257 : (2007) 136 DLT 73 : (2009) 93 DRJ 127 and submitted that there is no provision in the Act empowering the Court to terminate mandate of the Arbitrator who has entered upon reference and/or to substitute the same with an Arbitrator appointed by Court.

17. Mr. Jain on the other hand submitted in rejoinder that the Applicant had already dissolved the firm and invoked arbitration. At the time when the Letter of Reference was made, the firm had not been dissolved and was still subsisting, however, in view of the changed scenario and the circumstances set out resulting from the dissolution of the firm, it is not possible to carry on with process of pursuant to the Letter of Reference of 1st August, 2012. He submitted that no changes have been made with the Registrar of Firms. He further submitted that even otherwise, the documents which were got executed by the Arbitrator purporting to be Deed of Retirement upon which the Respondents were relying were executed in anticipation of the Award by the Arbitrator and were to be kept in the custody of the Arbitrator pending final Award. He, therefore, contended that the Applicant was not bound by the said documents and, therefore, cannot be said to have retired from the Partnership Firm and hence was the invocation of arbitration was valid. He further referred to Exhibit 4 being e-mail dated 8th August, 2012 from the Applicant''s group addressed to the Arbitrator wherein he had inter alia requested to furnish accounts for the year ending March, 2011 inspite of which the Arbitrator has failed to provide these details as called for. In the second e-mail is dated 11th August, 2012, the Applicant requested for updated statement of shares and equity based investment and once again reminded the Arbitrator of the final accounts of 31st March, 2011. He submitted that the Arbitrator failed and neglected to supply him with the information sought leading him to believe that the Arbitrator was not impartial. He then submitted that the Arbitrator himself had observed in paragraph 4 (d)(xii) that there was no dispute to be referred to the Tribunal for adjudication. This observation of the Arbitrator was in response to the challenge to the application under letter dated 30th November, 2012 wherein the Applicant stated that the Arbitrator has not

given directions for issuing final settlement and the Arbitrator himself has stated that there is no dispute to be referred to the Arbitrator.

18. In the present case, according to Mr. Jain, the Arbitrator ought not to have disclosed the signed documents which were obtained by practicing undue influence and coercion and inasmuch as, the Applicant is made to sign on the Retirement Deed and promised that the same will not be disclosed or handed over to any other party pending the adjudication of the dispute. However, the Arbitrator has committed breach of trust in having parted with the same. This is how the copy is available with the Respondents herein. According to Mr. Jain, the Applicant is fully competent to make the present applications, seeking appointment of an Arbitrator and all this Court will have to do are as follows:--

"(i) To determine whether the parties making the application has approached the appropriate High Court;

(ii) Whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement."

19. According to Mr. Jain, this application falls squarely within this category and satisfies both the counts in having approached the appropriate Court and the party applying is a party to the said agreement. He, therefore, submits that this Court will be justified in appointing an Arbitrator for adjudicating upon the dispute the parties. Therefore, Mr. Jain submits that the above applications are liable to be allowed.

20. On behalf of the Applicant, after the matter was reserved for orders, certain additional judgments were sought to be tendered. However, since the Respondents could not have the opportunity to deal with the same, I do not propose to take the same into consideration.

21. Having heard both the learned counsel at length and having considered the factual background, it is evident that the Applicant in all the three Arbitration Applications have undoubtedly signed the Letters of Reference. The execution of the Letters of Reference are not in doubt. Even thereafter, the fact that the Arbitrator entered upon the references is not in dispute. The Applicant had participated in the arbitration proceedings. He has deposited a sum of Rs. 1 crore and having executed the relevant documents as asked by the Arbitrator. The fact remains that the Letter of Reference Exhibit ''C'' at page 41 clearly records as follows:--

"It was decided between Ketan Shah and Deepak Shah that their partnership will split and Deepak Shah and his family will take their net due share of all joint assets and liabilities and exit all the current businesses. Now there is a difference of opinion amongst the members of the family regarding division/valuation of assets and business and hence this reference.

We clarify that our immovable property being respective residences and house at native place and ornaments etc. are already divided. You will have to ascertain the values of assets quantum of liabilities and come to a decision of dues of each of the sides and help us with a smooth settlement of the same."

22. It is seen from the above that certain immovable properties being their respective residences, house at native place and ornaments have already been divided. There is a dispute amongst the members regarding the assets in business. There was a need to ascertain the values of the assets quantum of liabilities and come to a decision on the dues of each side. The share of each branch of the family has also been determined before making the reference, namely, Kantilal Bhikalal Shah (Ladhani) and his family will have 36% share in the profits and assets and Anil Bhikalal Shah (Ladhani) or his family will have 64% share in the profits and assets. To adjudicate upon this limited area the reference was made. Furthermore, the Arbitrator was required to take into consideration the various requirements of the parties and various agreements within the parties while determining the share of each side. On page 42, the following paragraphs is of relevance:--

"We understand that it may not be feasible for you to decide on all issues at a time and we agree to abide by your gradual directions for implementation of division of assets/investments."

23. It was further agreed by the parties that they will fully cooperate with the Arbitrator and they will have the right to submit only facts, evidence, present witnesses, views and disputed points. The Arbitrator was free to take the views of the other family members while taking a decision. The reference may include all the three partnership business M/s. Prima Developers, Conex Metals (India) and Conex Metal (International). Further, the issue as to the control of business in Conex Metals (India) and Conex Metals (International) were also to be determined. It is further recorded at page 44 in the reference letter as follows:--

"We have made this reference to you as a sole arbitrator as all of us have a full faith in you and we will abide by all your decisions which can be given in part or in full and we shall implement the same as per your guidance and directions as and when the same is given. We shall ensure that entire settlement/division is done as per your directions. Deepak and Ketan both will jointly strive to ascertain and finalize the accounts of all organizations. It will be a duty of both families to ensure that the smooth functioning of all businesses is ensured."

We hereby authorize you to give award as well directions as to implement of the award. The present reference made to you for arbitration is irrevocable from both the parties...."

24. The above extracts from the Letter of Reference and reading the Letter of Reference as a whole, I am of the view that the parties clearly intended to refer all disputes pertaining to the assets and division of businesses and assets and quantum of liabilities as set out in the Letter of Reference. It is not for this Court to minutely examine these aspects of the matter. It is for the Arbitrator to decide. There can be no manner of doubt that the Letter of Reference is indeed a

valid reference, the execution of which is not disputed nor is it disputed that the parties have proceeded to participate in the reference. As regards the contentions of the Applicant, leading to the present application, it can be categorized as follows:--

"(i) the Arbitrator was not impartial;

(ii) the mandate had expired; and

(iii) the Arbitrator practiced fraud, coercion and undue influence in inducing the Applicant to execute certain documents."

25. As far as the first issue is concerned, the Applicant vide letter dated 16th November, 2012 Exhibit-G to the application had mounted his challenge to the impartiality of the Arbitrator. The challenge is by Kantilal B. Ladhani (Shah), Deeoak Kantilal Shah, Sudhaben Kantilal Shah and Hina Deepak Shah. The Arbitrator has dealt with the challenge vide his order dated 4th February, 2013 Exhibit-K to the application and rejected the challenge. In doing so, the Arbitrator noted the scope of his reference and inter alia stated that in fact there were no disputes between the two groups and what is referred to the Arbitral Tribunal is only the valuation and distribution of the assets and properties of the two groups as referred to in the Letter of Reference after taking into account the liabilities and to decide the quantum of share in the net worth and thereafter to ascertain the amount payable by Anil/Ketan Shah''s family to Kantilal B. Ladhani (Shah)/Deepak Shah''s family. The Arbitrator appears to have dealt with all the challenges raised to his impartiality with specific reference to the challenge as to fraudulent conduct and impartiality. Though it is the Applicant''s contention that the Arbitrator practiced undue influence and procured and got the Applicant to execute a Retirement Deed, there was no specific allegation of coercion, fraud or undue influence. The Arbitrator in his order has also dealt with this charge in paragraph (xxii). Ultimately, it is for the Arbitrator to consider what Award is to be passed and despite these observations, it is quite possible and it is expected that the Arbitrator will act impartially as he is required to. Mere allegations of impartiality cannot help the Applicant overcome the fact that a reference has been made.

26. The next contention that the mandate of the Arbitrator has expired has no merit, inasmuch as, the reference letter in its conclusive paragraph states as under:--

"We are desirous of obtaining your award within a period of 60 days and this time frame we request you to adhere to and we shall ensure that all compliances for your requisitions are made to enable you to adhere to the time frame. "

27. This by no means can be read as a confirmed time frame to publish an Award. It expresses the desire of the parties to obtain an Award within a period and requests the Arbitrator to adhere to the time frame. This request and desire is conditioned by the fact that the parties were to ensure that all the compliances

for the requisitions are made so as to enable the Arbitrator to observe to the time frame. This has not been done by the parties. As to who is responsible for the delay is not clear at this stage. Suffice it to say that the period of 60 days cannot be treated as definite and fatal deadline. The Act itself does not provide for termination of the mandate in such circumstances. The termination of the mandate is provided in Section 15 of the Act and also to some extent in Sections 13 & 14. In addition, the mandate of the Arbitrator terminates by an agreement of the parties under the circumstances set out in Section 15. The expiry of 60 days will not operate as termination of the mandate. Arbitral proceedings are also terminated under the provisions of Section 32 but these are not circumstances that arise in the present case and, therefore, this aspect it need not be considered. I am of the view that the mandate of the Arbitrator has not come to an end and the proceedings are very much alive before the Arbitrator.

28. As far as the allegations of fraud and coercion are concerned, relying upon the decision of the Supreme Court in the case of SBP & Co. (supra), it is stated that no material is shown to persuade him to take such a view at this juncture vis-?-vis the observations are concerned, I am of the view that the arbitration clause contained in the Partnership Deed has been superseded by subsequent and more specific writing by the parties as contained in the Letter of Reference. There is no doubt the Applicant has approached the correct High Court presuming that he was entitled to do so and that the Applicant is a party to the Arbitration Agreement. However, the contention that the arbitration clause in the Partnership Deed is still operative, merely by contending that the Applicant has now given notice of dissolution, does not mean that the Letter of Reference is vulnerable. To my mind, the Letter of Reference supersedes and substitutes the Arbitration Agreement, therefore, it still holds the field and the Arbitrator must proceed in accordance with law. The fact of dissolution by one partner by virtue of notice of dissolution, admittedly, is not taken into consideration as observed in the case of SBP & Co. (supra).

29. Applying the test of the principles reiterated in National Insurance Co. Ltd. (supra) in paragraph 21.1(b), the same need not decided, since I am of the view that the Applicant was a party to the arbitration agreement which is clearly superseded. As far as the second category of the issues is concerned, the disputes are clearly live ones and the Arbitrator is bound to decide the same. As far as the merits of the claim are concerned and the issue enumerated in paragraphs 22.2(b) and 22.3 are concerned, the same are to be decided. Having held so and having taken note of some of the grievance of the Applicant, it will be in the fitness of the things that the Arbitrator follows a fair procedure since the parties have not agreed upon any procedure, as contemplated under the Act. It is desirable that the Arbitrator determines the rules of procedure before continuing with the arbitration proceedings. The Arbitrator should also maintain the minutes of the meeting which is very fundamental and clearly a requirement in the interest of all parties. I, therefore, pass the following order:--

"(a) The Arbitration Application Nos. 94 of 2013, 95 of 2013 and Arbitration Application (L) No. 338 of 2013 are dismissed;

(b) There will be no order as to costs."

