



Corrected in terms of the order dated 22/06/2023

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
COMM. ARBITRATION PETITION NO.264 OF 2022**

Rajesh Sharma & Anr. .. Petitioners  
**Versus**  
Uma Constructions & Ors. .. Respondents

**WITH**

**COMM. ARBITRATION PETITION NO.185 OF 2022**

Deepa Sharma & Anr. .. Petitioners  
**Versus**  
Uma Constructions & Ors. .. Respondents

**WITH**

**COMM. ARBITRATION PETITION (L) NO.16413 OF 2022**

Deepa Sharma & Anr. .. Petitioners  
**Versus**  
Uma Constructions & Ors. .. Respondents

**WITH**

**COMM. ARBITRATION PETITION (L) NO.7131 OF 2022**

Shakan Lalchand Surtani & Ors. .. Petitioners  
**Versus**  
Uma Constructions & Ors. .. Respondents



**WITH**  
**CONTEMPT PETITION (L) NO.6695 OF 2022**

Sunny Mukesh Ramani .. Petitioner  
**Versus**  
Rajesh Gaurishankar Sharma & Ors. .. Respondents

**WITH**  
**ARBITRATION PETITION (L) NO.8860 OF 2020**

Krishan Hukumchand Kapoor & Anr. .. Petitioners  
**Versus**  
Uma Constructions & Ors. .. Respondents

**WITH**  
**ARBITRATION PETITION (L) NO.8861 OF 2020**

Hema Amarlal Ahuja .. Petitioner  
**Versus**  
Uma Constructions & Ors. .. Respondents

**WITH**  
**ARBITRATION PETITION (L) NO.8869 OF 2020**

Srichand Waduram Ahuja & Anr. .. Petitioners  
**Versus**  
Uma Constructions & Ors. .. Respondents

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**Mr Rohan Cama, a/w Mr Piyush Raheja, Mr. Akash Menon, Mr Vishal Pattabiraman, Ms. Bency Ramkrishanan, Mutahhar Khan i/b Mr Veer Kantariya, Advocates** for the Petitioner in CARBP No.264/20, CARBP No. 185/2022 and for the Respondent No.2 & 3 in CARBP(L) No.7131/2022, ARBP(L) No.8860/2020, ARBP(L) No.8861/2020, ARBP(L) No.8869/2020 and for the Respondent No. 3 & 4 in CARBP (L)No.16413/2022.

**Mr Sharan Jagtiani, Senior Advocate a/w Minal Jaiwant Chandnani, Advocates** for the Petitioner in CARBP (L)No.16413/2022.

**Dr. Birendra Saraf Senior Advocate a/w Ms. Naira Jeejeebhoy a/w Ms Pooja Gera i/b Nitin Parkhe, Advocates** for the Respondent No. 4 in CARBP(L) No.7131/2022, ARBP(L) No.8860/2020, ARBP(L) No.8861/2020, ARBP(L) No.8869/2020 and for the Respondent No. 2 in CARBP No.264/2022, CARBP No. 185/2022, CARBP (L)No.16413/2022

**Mr. Pratik Jani a/w Ms. Princee Vaishnav i/b Prime Legem** for the Petitioner in ARBP(L) No.8860/2020, ARBP(L) No.8861/2020, ARBP(L) No.8869/2020.

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**CORAM: BHARATI DANGRE, J.**

**RESERVED ON : 02<sup>nd</sup> DECEMBER, 2022**

**PRONOUNCED ON : 06<sup>th</sup> JUNE, 2023**

**JUDGMENT :-**

1. The dispute involved in the three Commercial Arbitration Petitions being filed as petition numbers CARBP No.264/2022, CARBP No.185/2022 and CARBP No.16341/2022, revolve around the affairs and assets of the partnership firm M/s. Uma Constructions (hereinafter referred to as 'the firm'). The firm



presently comprises of three partners, Mr Rajesh Sharma, Mr Sunil Sharma and Mr Sunny Ramani. Mr Rajesh Sharma and Mr Sunil Sharma (hereinafter referred to as Sharmas/Sharma brothers) stake interest to the tune of 25% in the said firm whereas Mr Sunny Ramani (hereinafter referred to as 'Ramani') claim to have 50% share in the profits and loss of the firm.

The firm is a single venture partnership constituted to redevelop a building - Hamrahi Co-operative Housing Society Limited (Hamrahi) located at 15<sup>th</sup> Road, Khar Pali Road, Khar (West), Mumbai.

2. The dispute between the partners arises out of the redevelopment of the said building and the three distinct petitions cumulatively challenge two orders passed by the sole Arbitrator in form of interim orders, pending the arbitration proceedings, which was made over to the Arbitrator by order dated 06.11.2020, while dealing with the counter petitions filed by the petitioners, i.e. the two Sharma brothers on one hand and Mr Ramani on the other, which was alleged to be a counterblast to the petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996. By order dated 06.11.2020, this Court directed the Arbitral Tribunal to adjudicate the disputes between the petitioners on one hand and the respondent no.2, Ramani, on the other.

3. Pursuant to the said order appointing the arbitral Tribunal the Commercial Arbitration Petition filed by the



Sharma brothers and that by the respondent no.2 were converted into application under Section 17 of the Arbitration and Conciliation Act, 1996 and the interim orders came to be passed in sequence, the first being passed on 31.03.2021 by which the learned Arbitrator issued certain directions to the Sharmas and Ramani, which included a direction to disclose certain information on oath and extend their cooperation to the Chartered Accountant in drawing of accounts for a particular period. A restraint order was imposed, which restrained both parties from dealing with selling, transferring, alienating, disposing of, encumbering and/or creating third-party rights in respect of the assets of the firm and particularly in respect of certain flats including flat no.1301 in Hamrahi Building. A further direction restrained the respective wives of the Sharma brothers from using, occupying, carrying out any fitout work or selling, transferring, alienating, disposing of, encumbering or creating third-party rights in flat no.1301.

The Sharmas were cast with the income tax liability as reflected in the income tax notice to be discharged within a period of four weeks and they were directed to file an affidavit to that effect.

The application of Ramani, for appointment of Receiver and in the alternative relief for attachment of the firm's assets came to be rejected.

4. The second order which is subject to challenge through two petitions is the order dated 17.05.2022, which comes by



way of a subsequent development and its genesis lies in the alleged breach of the order dated 31.03.2021 by the Sharmas and it was premised before the Tribunal on behalf of Ramani that subsequent to the passing of the earlier order by the Tribunal there is a complete breakdown in the affairs of the firm and it has become necessary to safeguard the interest of the firm by appointing a Receiver for the entire building and also to ensure completion of the balance civil works/conduct the affairs of the firm including obtaining the balance MCGM permissions, selling the remaining units, handing over of flats to the third party purchasers and ensuring that the proper accounts are maintained.

After a serious contest to the said reliefs by the Sharmas, the Tribunal granted the relief as prayed by Ramani, by appointing a private Receiver to safeguard and protect the disputed flats and directing the Receiver to complete the balance/unfinished work in the disputed flats through the current contractor and/or by appointing a new contractor. The Receiver was directed to continue to be in possession of the disputed flats pending the arbitration proceedings and take all necessary steps to ensure that no further third-party rights are created in respect of the said flats.

5. Before I adjudicate the legality and propriety of the two impugned orders, it is necessary to consider the background facts in detail, since the dispute now at this time is not only restricted to the partners of the said firm but has also brought within its sweep several purchasers of the respective flats in



the said building, whose construction work is now complete and even the Occupation Certificate is received on 14.03.2022.

6. Through the learned Counsel Mr Rohan Cama appearing for the Sharma brothers in Commercial Arbitration Petition No.264/2022 and Mr Sharan Jagtiani, who represents the petitioners in Commercial Arbitration Petition No.185/2022 and 16413/2022 filed by the wives Mrs Deepa Sharma and Mrs Sangeeta Sharma and upon also hearing Ms Naira Jeejeebhoy representing Ramani, the facts are assimilated from distinct proceedings and the necessary facts are set out in the following paragraphs.

7. By a Deed of Admission, Retirement and Continuation of Partnership executed on 01.04.2011, by Mr Rajesh Gaurishanker Sharma, in his capacity as continuing partner, Mr Sunny Ramani came to be inducted as a partner upon one Mr Chandru Chugani retiring from the existing partnership carrying business through the firm named and styled as M/s. Uma Constructions in terms of the Agreement of Partnership dated 07.04.2008 and supplementary Deed of Partnership dated 01.04.2010.

The continuing partner and retiring partner agreed to an incoming partner in the partnership business with effect from 01.04.2011 on the basis of certain terms and conditions mutually agreed between the parties. Upon the retirement of the "retiring partner" the continuing partner mutually agreed to carry on running the partnership business as a going



concern as per book values of all the assets, and liabilities of the said partnership business as on the close of business hours on 31.03.2011. The continuing partner agreed to continue the partnership firm M/s. Uma Constructions and take over the existing partnership business with all its assets, liabilities and obligations, if any, at their respective book values as on 31.03.2011. The retiring partner was permitted to retire with no rights, titles, claims and/or interest of whatsoever nature, in or against the partnership business.

The continuing partner and the incoming partner were conferred with full rights and liberty to collect the assets of the partnership business and to settle all the accounts, matters and things relating to the partnership business. The continuing partner and the retiring partner also agreed by the said Deed to get completed all the pending Income Tax and Sales Tax Assessments and all allied matters relating to the partnership business and agreed to bear their respective income tax liabilities, if any, including a share in the registered firm tax payable up to the date of the retiring partner, that is up to 31.03.2011.

8. The above Partnership Deed provided for the share of remuneration to the extent of 50.00% for Mr Rajesh Sharma and 50.00% for Mr Sunny Ramani.

The Deed also provided for dissolution of the partnership by mutual consent of the parties and it also prescribed that after payment of liabilities, the assets of the partnership would



be mutually distributed amongst the partners according to their respective profit-sharing ratio.

9. The Deed comprised of an arbitration clause which contemplated that the differences, if any, between the partners shall be resolved through mutual discussion but if they could not be settled, the dispute shall be referred for arbitration to the sole Arbitrator and the decision and order of the Arbitrator shall be binding on both the parties.

10. A Memorandum of Understanding was further executed on 06.05.2011, between Mr.Rajesh Sharma and Mr.Baldev Sharma, his brother as a part of the first and second part and Mr.Sunny Ramani, which incorporated that family members of Sunny Ramani had purchased floors in the building Hamrahi to be developed by M/s. Uma Constructions and a total amount of ₹6.24 crores was paid for the purchase of the said flats and it was distributed to the members buying shares of retiring partners. The said Deed also confirmed that flat nos.2,7 and 12 are owned by Rajesh Sharma and his family.

Another Declaration is signed between the three partners parties on 15.12.2012 declaring the liability of the firm and the Declaration was signed by Rajesh Sharma, Sunil Sharma and Sunny Ramani referring to a Development Agreement dated 03.09.2009 entered with Hamrahi Co-operative Housing Society for the redevelopment of a plot of land bearing C.T.S. No.F/68, Plot no.608, 15<sup>th</sup> Road, Khar West, Mumbai. In terms of the said Development Agreement, M/s. Uma Constructions



became the absolute owner of the 6<sup>th</sup> to 13<sup>th</sup> floors in the new building whereas the society was allotted 1<sup>st</sup> to 5<sup>th</sup> floors in the new building to be constructed on the said plot. The first party to the declaration Mr Rajesh Sharma, agreed to bring the capital of ₹7.00 crores in the firm and transferred his half share out of his 50% share in the firm in favour of party no.3 to the declaration, Mr Sunil Gaurishanker Sharma, who agreed to bring the capital of ₹7.00 crores to clear the liability of the firm which was tentatively estimated as ₹27,52,00,000/- (Rupees twenty-seven crores fifty-two lakhs only) as of date.

By the said Declaration, it was agreed between the parties that the two Sharma brothers will hold a 25% share each whereas Mr Ramani would hold 50% share in the firm. It was also mutually agreed between the parties that the amount of ₹7.00 crores being contributed by the two Sharma brothers each and an amount of ₹14.00 crores to be contributed by Ramani would bring the collection to ₹28.00 crores, which shall be utilised for clearing the liability of the firm.

The Declaration also recorded that the 6<sup>th</sup> and 7<sup>th</sup> floors in the new building being constructed will be sold by the firm, and the consideration received shall be utilised for the construction/completion of the building. All the future expenses for completion of the building, and for obtaining of Occupancy Certificate were agreed to be borne in the ratio of 25% and 50% by the signatories to the Declaration respectively respectively.



11. The understanding arrived between the parties was recorded as under:

“e. The entire 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors of the new building shall belong to deponent no.2 (Ramani),

f. The entire 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> floors of the new building shall jointly belong to deponent nos.1 and 3 (Sharma brothers),

g. The 6<sup>th</sup> and 7<sup>th</sup> floors will be sold”.

It was also agreed that none of the partners, without consent of the other, shall forgo the whole or any part of any debt or sum due to the partners or trade or dispose of by loan pledge, sale or otherwise of any part of the partnership property or assign or charge their interest in the firm.

It was again agreed that if any dispute arises between the parties, it shall be made over to the sole Arbitrator.

12. A separate Deed of Admission and Continuation of Partnership was executed on 05.02.2013, thereby admitting Sunil Sharma as a 25% partner in M/s. Uma constructions with effect from 24.01.2013 and he was assigned a sharing ratio of 25%.

13. In this background, when the redevelopment of the Hamrahi building progressed, the disputes surfaced arose between the partners.



Some free-sale flat purchasers filed petitions before the High Court to protect their rights in their respective flats. This resulted in the passing of several orders by the High Court including the appointment of a monitoring committee to complete the redevelopment work. The monitoring committee was disbanded by an order dated 21.01.2020 in one of the petitions, upon the construction work being completed.

14. The Sharmas filed a Section 9 petition, which was followed by a petition filed by Ramani under Section 9 and on 06.11.2020 an ad interim order was passed by this Court, protecting the assets of the firm including the flats under redevelopment. A sole Arbitrator was appointed to adjudicate the dispute arising between parties under the Deed of Admission, Retirement and Continuation of Partnership dated 05.02.2013. Section 9 petitions filed by them were converted into Section 17 application and the ad interim reliefs were continued by the Arbitrator, who subsequently recused himself upon an objection being raised by the Sharmas.

At this juncture, it is necessary to note that in the order dated 20.01.2021 passed by the sole Arbitrator, it was recorded that Mrs Deepa Rajesh Sharma and Mrs Sangeeta Sunil Sharma had consented to the terms of reference and they agreed to be parties to the arbitration proceedings. The terms of reference were signed by all the concerned parties on 23.01.2021 and that is how the Sharma wives were introduced in the arbitration proceedings.



15. The Tribunal had before it the two applications filed by the Sharma brothers on one hand and Ramani on the other.

It was the contention of the Sharmas that, Ramani who was to bring initial capital of ₹6.24 crores had failed to do so and has brought only ₹5.81 crores whereas Sharmas themselves had invested an aggregate amount of ₹14.81 crores.

The Sharmas projected that prior to the induction of Ramani they had acquired rights in respect of some flats in the old building, that is flat nos.2, 7 and 12. It was alleged that Ramani avoided executing documents and/or registering deed in favour of the Sharmas in respect of flat no.1301. It was submitted that in the year 2013, an agreement was executed by M/s. Uma Constructions, which was even signed by Ramani in favour of the Sharmas, that is the two Sharma brothers and their wives and it was recorded in the said document that the purchasers had paid to the promoter an amount of ₹4.00 lakhs as part consideration before the execution of the document and agreed to pay to the promoters the balance of the sale price which would be followed by execution of a written agreement of sale of premises to the purchasers under Section 4 of MOFA Act. The consideration was agreed as ₹3.20 crores , but the said document is undated and unstamped. However, Ramani resiled and retained the original document and despite persistent persuasion, the said document was not made available for registration, despite an assertion that consideration of ₹3.20 crores having paid by the purchasers i.e. the Sharmas between 2015-17 by bank transfer into the firm's account. The Sharmas



supported the said statement by furnishing the details of the bank statement and the date when the transfers happened.

16. On failure to release the 2013 agreement, the two Sharma brothers on behalf of the firm executed another document on 30.06.2020 in favour of Mrs Deepa Rajesh Sharma and Mrs Sangeeta Sunil Sharma under which they were held entitled to residential flat no.1301 on the 13<sup>th</sup> floor, the flat being specifically described in the said sale agreement with a specific mention of a sum of ₹3.20 crores being paid by the purchasers to the promoters before its registration and the receipt of the amount being admitted and acknowledged on behalf of the firm.

The said agreement also comprised of a clause which declared that the possession of flat no.1301 has been handed over by the promoter/s to the purchaser/s on registration of agreement and the possession of the purchasers is absolute and shall not be revoked/challenged and they were entitled to occupy the said premises and use any part thereof and permit the same to be used for the purpose of residence.

The agreement bears the signature of Mr Rajesh Sharma and Mr Sunil Sharma as the “promoters” of M/s. Uma Constructions, the purchasers being shown to be Mrs Deepa Rajesh Sharma and Mrs Sangeeta Sunil Sharma.

17. The Sharma brothers claim that as partners of the firm, it is permissible for them to execute the said document as even originally as per the agreement of the year 2013, the flat was to



go to the Sharmas but under the 2020 document it has been shown to be sold to their wives for a consideration of ₹3.20 crores and this consideration was consumed by the firm in its business venture.

Apart from this, the Sharmas also claim their entitlement to rent/compensation for their three flats being flat nos.2,7 and 12 but the same was refused to them.

18. In the application filed it was also alleged that it is Ramani who is responsible for delaying the redevelopment process resulting in proceedings being filed before the Bombay High Court seeking specific performance of the agreement executed with the individual members.

Thus, Sharmas claimed relief of handing over the original agreement of flat no.1301. A direction was sought against Ramani to render true and correct accounts of the firm, in the background that no accounts were maintained by the firm in 2011 nor any tax returns were filed and, therefore, it had become necessary to draw the partnership account through an independent Chartered Accountant. Sharmas ensured their cooperation in undertaking the said exercise. The accounts were prayed to be drawn from 01.04.2011 since Ramani came to be inducted as a partner from the said date.

19. On the other hand, Ramani in his application under Section 17 placed before the Tribunal the messy affairs of the Sharmas. His case before the Tribunal is, prior to Ramani being



inducted as a partner three of his family members had purchased the 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> floor in the old building sought to be redeveloped and a consideration of ₹6.24 crores was parted as a part payment and even allotment letters were issued by the firm in their favour. This payment was adjusted towards Ramani's contribution towards the firm and the allotments made in favour of the family members stood cancelled.

As per Ramani, the MOU dated 01.04.2011 clearly recorded that a sum of ₹6.24 crores is adjusted towards buying shares of the retiring partner Mr Chughani. Ramani specifically pleaded that the Sharmas behind his back executed an agreement on 30.06.2020, purportedly transferring flat no.1301 in favour of their wives. This conduct of the Sharmas led the applicant to believe that their wives would create further third-party interest in flat no.1301 and/or other assets of the firm and, therefore, he prayed for a restraint order for either creating third-party rights or otherwise dealing with or disposing of the assets of the firm.

In terms of MOU, it was argued that the sale of consideration of ₹10.03 crores was to come to Ramani's accounts from the sale of flats from the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors along with 50% of sale proceeds for flat no.401 to be added towards contribution from Ramani. It was specifically denied that they did not bring in the decided contribution into the firm.



The manner in which flat no.1301 was alleged to have been transferred by executing an agreement to sale in favour of their wives by the Sharma brothers without any consideration being paid towards the same, an apprehension was expressed that they may create further third-party interest and jeopardize the position of the firm and, therefore it is necessary to appoint a Receiver to safeguard the project of the firm.

20. The two reliefs were primarily sought by Ramani, i.e. appointing a Receiver on the entire project and restraining the Sharmas and their wives from dealing with the assets of the firm in any manner. Another relief was sought for deposit of the amount due and payable as income tax dues for Assessment Year 2011-12 for which the Sharmas were solely liable.

21. In this background, the Tribunal was called upon to adjudicate the rival contentions.

A consensus was reached between the parties about drawing up all the accounts of the firm through an individual Chartered Accountant and, accordingly, the Tribunal appointed an independent Chartered Accountant for drawing of the accounts from 01.04.2009 till 31.03.2021 and both the parties were directed to render their cooperation by preferring a joint application to the concerned banks and disclosing on oath the statement of all bank accounts of the firm as well as disclosing the list of assets/properties and all transactions executed by the firm during the said period. The parties were also directed



to give the list of all payments received by the firm during the said period towards the sale of each flat.

Though the direction to draw the accounts from 01.04.2009 is frowned upon by the Sharmas, and it is one of the grounds raised in the appeal filed by them, I find the order of the arbitral Tribunal is perfectly justified in reflecting drawing the accounts from the said date, as it will be necessary to ascertain the position of the firm prior to induction of Mr. Ramani from 01.04.2011 and, therefore, there is no merit in the submission that the accounts ought to have been directed to be drawn from 01.04.2011. In any case, prior to the induction, Ramani is not expected to discharge any liability of the firm, which is the complete responsibility of Sharmas and upon the accounts being drawn from 01.04.2009, the position of the firm as on 01.04.2011 would be clearly reflected.

22. A challenge was raised before the Tribunal, as reflected in the impugned order dated 31.03.2021, as regards the tax liability and has fastened the Sharmas with the income tax liability of ₹1,64,89,451/- recorded in the income tax notice dated 11.03.2020.

The income tax authorities raised a demand for its dues of the Assessment Year 2011-12 (Financial Year 2010-11) to the tune of ₹1,64,89,451/- with interest.

23. The sole Arbitrator referred to the Court appointed Administrator's report which referred to the income tax notices



and he also made a reference to the High Court's order dated 21.01.2020 which recorded that there are no income tax dues to be recovered from the project building Hamrahi. However, it is clarified by the Arbitrator that once again a demand notice was issued on 11.03.2020 to pay the arrears of ₹1.64 crores and there is also a garnishee notice by the Income Tax Department calling upon a customer Mr Pravin Talreja to pay the amount payable by him to the firm.

24. Sharmas deny the demand-cum-liability by the Income Tax Department and even before me, it was vehemently argued and strongly disputed that the Income Tax Department had ever issued such a notice. The Arbitrator clearly recorded a finding that the firm despite its registration never filed any income tax returns or statutory returns since its formation. The learned Arbitrator has also offered justiciable explanation for drawing the accounts from 01.04.2009, which would in fact in the interest of the firm to ascertain whether Ramani has paid an amount of ₹6.24 crores which in the MOU dated 01.04.2011 came to be adjusted towards the share of Ramani. However, if there is a demand for arrears of tax, it amounts to a liability and the firm must clear the same.

Despite Sharmas' denial about the liability, the Arbitrator after making reference to the garnishee notice deemed it appropriate to direct the Sharmas to satisfy the demand in the notice dated 11.03.2020.



25. Since the demand in the said notice is prior to induction of Ramani, with effect from 01.04.2011, and it was agreed in the Deed of Admission, Retirement and Continuation of Partnership that the continuing partner shall continue the partnership firm M/s. Uma Constructions and take over the existing partnership business as a going concern with all its assets and liabilities at their respective book values on the close of business hours on 31.03.2011, it is imperative for Sharmas to discharge the said liability. It is also agreed by the very said document that the continuing partner and the retiring partner shall get completed all the pending income tax and sales tax assessments and alleged matters relating to said partnership business and agree to bear their respective income tax liability, if any, including a share in the registered firm, tax payable up to the date of retirement of the retiring partner, that is up to 31.03.2011. Necessarily, since Ramani walked into the said venture with effect from 01.04.2011, the liability of whatsoever nature including that of the income tax must fall upon the Sharmas. There cannot be any iota of doubt in my mind that the said liability shall be discharged by the Sharmas subject to the rider that it is open for the Sharmas to dispute the liability fastened or take any appropriate steps for questioning the burden cast upon the firm. However, this will be completely for the Sharmas to take appropriate steps with no involvement of Ramani since the liability is imposed for a period which is prior in the point of time when Ramani joined M/s. Uma Constructions.

The direction of the Arbitral Tribunal on 31.03.2021 to clear the arrears of income tax demanded in the notice dated



11.03.2020, through the Sharmas, therefore, does not warrant any interference and the direction is upheld.

26. This takes me to another point which is the bone of contention between the parties and this is in respect of the allocation of flats.

The building Hamrahi comprises of 13 floors along with a stilt plus a podium. Undoubtedly, in terms of the understanding between the parties, both Sharmas and Ramani are entitled to some of the flats. The said understanding between the parties in MOU dated 01.04.2011, on the basis of Ramani being inducted as a 50% of the partner of the firm record that family members of Ramani had purchased floors in the building and paid some token amount. As per Ramani, flats were purchased on the 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> floors. The MOU record that flat nos.12, 7 and 2 are owned by Rajesh Sharma and his family. Admittedly, there is no reference to flat no.1301.

27. The declaration signed by the Sharmas and Ramani on 15.12.2012 clearly recorded the understanding reached between the partners of the firm which even included Sunil Sharma, the 25% partner whose Deed of Admission was to be executed on a subsequent date. The capital amount to be brought by the parties was clearly defined so as to clear the liability of the firm on the said date. It is clearly agreed between the parties that the 6<sup>th</sup> and 7<sup>th</sup> floor of the new building shall be sold by the firm and the consideration received shall be utilised for construction/completion of the building whereas the



8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors shall belong to Ramani and 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> floors would jointly belong to the Sharma brothers.

28. There is no clarity on the amount of capital being brought by Ramani as the Sharmas had contended before the learned Arbitrator that Ramani has failed to bring the agreed amount. As on the date of the declaration, that is 15.12.2012, the liability of the firm was tentatively assessed at ₹27.52 crores and, therefore, it was an arrangement worked between the partners of M/s. Uma Constructions to pump in a sum of ₹28.00 crores, in the proportion of 50% to be brought by Ramani and the remaining to be contributed by Sharmas in equal portions. However, after a decade of arriving at such an arrangement, one is not sure of the estimated liability, which may have accrued in the years subsequent to 2012 on account of non-payment of income tax and other statutory liabilities.

The sole Arbitrator has rightly recorded that he is unable to verify the actual contribution towards the capital involvement and the further understanding about the entitlement of the flats to the partners, in proportion of their capital contributions, could not be ascertained. The Arbitrator specifically record that the correctness of the claim staked by the contesting parties could not be ascertained at that stage and it would be determined at the time of trial. However, in order to ensure that the assets are protected, he deemed it appropriate to continue the status quo order operating from 06.11.2020 as the Occupancy Certificate was yet to be obtained and as such flats cannot be used or occupied by any person and



if any amount was received towards consideration, the same was to be deposited in the firm's account. He dealt with flat no.601, 201, 102, 202, 802, 1001 and 1002 and recorded that the order of status quo deserves to be continued in respect of the said flats as they form the subject matter of certain proceedings, as some of them form part of the pending proceedings.

29. The controversial flat being flat no.1301 was dealt with separately by the Arbitrator in the backdrop of the rival contentions about it being validly transferred to Sharmas. It is the case of Sharmas that an agreement was executed in respect of the said flat in the year 2013 without the date being mentioned and though it is not registered it came to be signed by Ramani as one of the partners of M/s. Uma Constructions/the promoters in favour of the purchasers, the Sharma family. But since this document was kept away and not offered for registration despite the entire consideration of ₹3.20 crores having been transferred, the two Sharma brothers executed an agreement for sale in respect of the said flat in their capacity as partners of the said firm on a subsequent date, that is 30.06.2020 conveying flat no.1301 in favour of their respective wives.

30. The High Court by its order dated 06.11.2020, injuncted the Sharmas and their wives from creating any third-party rights till the decision of the Tribunal and this ad interim injunction is continued by the sole Arbitrator by his order dated 31.03.2021. The relief sought by the Sharmas to deposit the



agreement in respect of the flat executed in the year 2013, stands on shaky ground about the placing of the agreement with the Advocate by way of escrow but in the fairness of the things, the Tribunal directed Ramani to contact the Advocate and obtain the original documents and submit it to the Tribunal within two weeks, as Ramani had failed to demonstrate any right to hold on the documents either directly or through someone else. The relief prayed by Ramani that the Sharma wives should execute the Deed of Cancellation in respect of the document dated 31.07.2020 was however declined at an interim stage.

31. Subsequent to the order dated 31.03.2021, on 14.03.2022, the MCGM granted Occupancy Certificate (OC) for the entire building. Sharmas continued with the process of completing the finishing works to hand over the flats pursuant to the Occupancy Certificate being granted.

32. On 15.03.2022, this Court, by an order passed in a batch of appeals filed by the third-party flat purchasers and the litigating parties, issued a direction for the appearance of the concerned parties before the Tribunal so that appropriate directions can be passed in protecting the disputed flats pending the award.

33. This also resulted in an application being filed by Ramani under Section 17 of the Arbitration and Conciliation Act on 20.03.2022, seeking directions to safeguard the firm's assets, that is the disputed flats and also for the appointment of a



private Receiver or in the alternative for handing over of the keys in respect of the disputed flats of Ramani.

In this application, it was alleged that Sharmas had misrepresented that flat nos.2,7 & 12 belong to them and, in fact, it was realised that flat no.7 is an asset of the firm as it was purchased in the name of the firm and it was never transferred to the Sharmas. The application highlighted the status of the flats in the Hamrahi building and it was specifically averred that the firm had sold flat nos.802, 1001 and 1002 to Hema Ramani, Sheena Ramani and Neha Ramani for consideration of ₹3,91,80,000/- and as per the Sale Agreement, the possession ought to have been handed over to them but despite receiving consideration, steps were not taken to hand over the possession. It was also stated that the Sharmas did not have any interest in the said flats, which clearly fell to the share of Ramani but they unilaterally and wrongfully purported to cancel/terminate agreements in relation to the aforesaid flats by issuing a letter from the Advocate. Ramani disputed the cancellation of the said agreements in respect of the three flats and contended that they continue to be valid purchasers of the three flats and the agreement being binding on the firm itself.

34. It was also projected by Ramani that Sharma brothers are obstructing the completion of the project and wrongfully claiming rights in the assets of the firm and attempting to act in a unilaterally high-handed manner to his prejudice and also prejudicially affecting the interest of the firm. It was alleged that the firm had to exchange flats due to the wrongful act of



the Sharmas and they are now purporting to unilaterally cancel valid agreements and foist liability on the said firm and, therefore, Ramani apprehended that Sharmas will unilaterally and wrongfully attempt to deal with and create third party rights in respect of the said flats purchased by distinct purchasers and also third party purchasers, contribution from whom has formed part of the partnership assets.

A restraint order was, therefore, sought to restrain Sharmas from dealing with the flats in any manner, i.e. either by selling, transferring, alienating, disposing or encumbering and/or creating third-party rights in respect of the assets of the firm.

35. The basis of the application seeking the appointment of Receiver over the entire building was purportedly the breach of the earlier order passed by the learned Arbitrator on 31.03.2021 and a specific allegation is levelled that the breach was intentional. The change of circumstance was pressed into service for granting the relief of appointment of Receiver which was refused, on 31.03.2021 and it was projected that the action of the Sharmas has resulted in a failure to secure the assets of the firm and it was highlighted that in respect of the three flats which were sold in the year 2013, that is flat no.801, 901 and 902 by way of registered agreements under MOFA to one Talreja, the firm had received ₹6.10 crores, which amounted to approximately 90% of the consideration for the three flats. Though there was no consensus as to what was the balance amount remaining unpaid as according to Ramani and Talrejas,



an amount of ₹66.38 lakhs is due and payable against the three flats, Sharma brothers claimed that the outstanding amount was to the tune of ₹96.18 lakhs.

36. It was specifically submitted that by order dated 31.03.2021 passed by the Tribunal, Ramani and Sharmas were restrained from "dealing with" in any manner in respect of the assets of the firm which would include selling, alienating, creating third party rights in respect of the said assets. It was alleged that despite this injunction on 06.08.2021, Sharmas sought to unilaterally terminate the three registered agreements and this unilateral termination amounted to a breach of the order dated 31.03.2021 passed by the Tribunal. Ramani alleged that there was no valid or contractual basis for terminating the agreement with Talreja. As such, termination has now resulted in the firm expending money on litigating. A heap of correspondence was relied upon with the justification being offered from Sharmas, the contention of Ramani before the Tribunal was to the effect that the flats will revert back as assets of the firm, should be safeguarded by the appointment of a Receiver who shall prevent repetition of such action in respect of these flats as well as any other flats.

37. Another breach attributed to the Sharmas is in respect of the directions issued in the order dated 31.03.2021, which had resulted in a delay in drawing of the accounts of the firm so as to avoid the actual financial picture of the firm coming on record as well as their failure to discharge the liability towards the tax obligation.



38. The learned Counsel Ms Jeejeebhoy, representing Ramani, who argued before the Tribunal and even before me, would invite my attention to another flagrant breach of the earlier order passed by the Tribunal in respect of the flat no.1301, as an asset of the firm.

She would submit that the Sharmas had attempted to deal with the said flat despite an injunction being passed by unilaterally executing an agreement on 30.06.2020, which was without consent of her client. She would submit that the parties were directed to maintain the status quo in respect of the said flat by order dated 31.03.2021 and the Sharma wives were restrained from using, occupying, carrying out any fit-out works or alienating or creating any third-party rights for the said flat but by submitting ample proof it was pointed out to the Tribunal that they are in possession of the said flat and are illegally occupying and using the same. They had obtained an electric meter and the bills revealed heavy consumption and it was even demonstrated that Air Conditioners were installed in the said flats. It was apparent from a notice of disconnection issued by the service provider due to non-payment of the charges that the flat no.1301 was being put to use. When the MCGM conducted the site inspection Sharma wives were not found in possession of the flats and when Ramani attempted to have an inspection of the building on 24.02.2022, the main gate of the building was locked and the inspection was avoided and after the Tribunal's intervention when the inspection was granted, there appeared to be shifting of furniture from flat no.1301 to 1201 and on the basis of the said report it is sought



to be argued that despite an injunction and restraint order, the flat has been put to use.

39. The allegation about the breach of the Tribunal's order dated 31.03.2021 is specifically denied by the Sharmas including their wives and the argument advanced on their behalf is to the effect that they were in possession of the flat subsequent to the agreement dated 30.06.2020 and their possession is prior in point of time of passing of any interim orders. But a distinction is drawn by them between, being in "possession" and being in "occupation". The use of electricity was sought to be explained, that the electricity meter for flat no.1301 was utilised for completing the common building work so that the Occupancy Certificate can be granted for the entire building. It is pointed out that the flat is inhabitable and none of the members of the Sharma family is in occupation of the said flat.

40. The Tribunal, thereafter, dealt with the alleged change in circumstance pointed out by Ramani and as regards the undisputed flats in the building, since the Occupation Certificate was now received, it referred to the understanding recorded by it during the course of hearing on 21.03.2022 when it referred to flat nos.101, 501, 502, and 701 possession of which was already handed over to the respective purchasers. In respect of flat nos.102, 301, 302, 401, 402, 1101 and 1102 the locks of which were found to be broken and the keys of which were with Sharmas, an undertaking was submitted not to deal with the said flats by creating any third party rights over them. It was



also undertaken that the flats in which the ongoing cleaning/finishing work was ongoing for the parties of handing over to the flat purchaser, they would complete the work and hand over the flats to the respective flat purchasers. This covered flat nos.301, 302, 401, 402, 1101 and 1102.

41. A consensus was recorded by the Tribunal in respect of handing over of these flats. Thus, out of 23 flats in the newly constructed building, 10 flats were undisputed whereas flat no.602 was reserved for the society's office and since the consensus was recorded in respect of these flats there is no dispute among the parties in respect of these 10 plus 1 flats.

42. The following flats, which are in dispute, are as below :

- (i) Flat nos.102, 201, 202, 601 - belong to the partnership firm or certain third-party claimants,
- (ii) Flat nos.802, 1001, 1002 - Ramani flats,
- (iii) Flat nos.801, 901, 902 - the purported Talreja flats,
- (iv) Flat nos.1201, 1202 - Sharmas' flats
- (v) Flat no.1301 - the flat belongs to the Sharma wives.

43. The flats in above five categories are sought to be bifurcated into distinct categories; item nos.(i),(ii) & (v), covering 8 flats are projected to be accounting for change in the circumstances. As far as the third category is concerned, that is the flats belonging to Talreja though it was not initially in dispute, they have come into the disputed category since it is alleged that Sharmas terminated the agreement with Talreja on account of non-clearance of dues and it is sought to be projected



that, in any case, the flats will come back to the firm and the fifth category is in respect of the flat no.1301 where the Sharmas argue that they were already in possession of the said flat and were not occupying the same. As far as category (iv) is concerned, that is flat no.1201 and 1202, though an injunction order operated in respect of the said flats, Sharmas attempted to settle Bedi and my attention is invited to the consent terms presented to this Court in Commercial Suit No.448/2019 filed by Rajendra Bedi against M/s. Uma Constructions on a Notice of Motion (L) no.1037 of 2019.

The order passed by this Court on 03.05.2019 records that parties have entered into consent minutes of an order signed by the plaintiff as well as the defendant, who were the partners of M/s. Uma Constructions and these consent of minutes which bear the signature of Ramani as well as the Sharmas record that Sharmas, i.e. defendants nos.2 & 3 were paying an amount of ₹22.50 lakhs to the plaintiff Bedi, by way of interest for an extension being granted and due to the assertion of the plaintiff that there is a breach of an order passed in his favour. It was agreed that in the event the full payment of ₹5.00 crores is made prior to 31.07.2019, Sharmas will be entitled to get a proportionate reduction.

The consent terms record that pending the payment of the entire sum, flat nos.1201 and 1202 belong to the Sharmas on the 12<sup>th</sup> floor and the building shall remain injunctioned and would offer as a security for satisfaction of the claim of the plaintiff. Upon payment of the entire sum, the security shall be



released and the plaintiff shall withdraw the said suit. Defendant nos.2 & 3, the Sharmas reserved the liberty to bid for the said security flat or bring a new buyer for the same.

44. As far as Ramani is concerned the consent terms clearly record that he being a partner impleaded as defendant no.4 to the suit shall not have any right, title and interest in respect of the secured flat, that is flat nos.1201 and 1202. It is thus argued that Ramani had given up his claim over the said flats. Thus as far as flat nos.1201 and 1202 are concerned since the same is pending adjudication in the suit, it is by way of security and that is why not subjected to arbitration.

45. I find sufficient justification in keeping the said flats aside since Ramani did not stake any claim in respect of the said flat and the understanding drawn in the form of the consent terms amounted to an order which was purely between the Sharmas and Bedi, who had already instituted a suit, which is pending.

46. In this background, the Arbitrator dealt with the alleged breach asserted by Ramani, on each count.

The first allegation faced is dealing with Talreja's flats that is flat nos.801, 901 and 902.

Admittedly, the order dated 31.03.2021 restrained Ramani and Sharmas from dealing with, selling, transferring, disposing of encumbering and/or creating third-party rights in respect of the assets of the firm and in particular flat nos.102,



201, 202, 601, 802, 1001, 1002 and 1301. The said order restricted the parties from dealing with the assets of the firm.

The Tribunal attributed the broadest possible meaning to the word "*dealing with*" and held that the purpose of passing an injunction restraining the parties on both sides, that they do not deal with the assets of the firm thereby prejudicially affecting the rights of the other partner. The termination of the agreement in respect of the said flat unilaterally was held to be a breach of an order, by which a restraint was imposed for "*dealing with*" the said flats.

47. I concur with the view expressed by the Arbitral Tribunal where the Tribunal has returned a finding, rejecting the broad argument that, in any case, if the agreement with Talreja is cancelled, it would restore the flats to the firm, was no justification for the alleged breach.

In any case, the underlying spirit of the order dated 31.03.2021 was to restrain the parties from creating any third-party interest in the flats, pending the arbitration proceedings and if at all any decision was to be taken for terminating the existing agreement, the Tribunal should have been kept for in the loophole or by seeking consent from the other partner, with the permission of the Tribunal the exercise ought to have been undertaken. But admittedly, there is no such step taken and, hence, the Tribunal rendered a finding that cancellation of the agreement in respect of the flat nos.801, 901 and 902, has definitely resulted in the breach of the order.



48. Dealing with the breach of the directions directing the parties to produce their accounts so that they can be certified through the Chartered Accountant, admittedly there is no compliance with the order and specifically the direction issued in para 58(ii)(a), 58(iii) read with paragraph 33 of the order dated 31.03.2021. The Tribunal recorded that Sharmas were once again directed to furnish the details but the information was submitted on a piecemeal basis and they dragged their feet in submitting the relevant information which would have enabled the expert in drawing up of the accounts. In fact, Sharmas were in charge of the firm for the relevant period before the induction of Ramani and, therefore, it was imperative for them to submit the necessary information. The learned Arbitrator has therefore rightly recorded that Sharmas are not extending cooperation to the expert in drawing the accounts and their non-cooperation has also delayed the statutory compliances of the firm. There is also sufficient justification for recording a conclusion that the breach is deliberate and intended to delay the drawing up of accounts by the expert and prevent the correct facts from coming to light.

I find no infirmity in the finding recorded by the Tribunal that the breach is deliberate.

49. As regards flat no.1301 where certain evidence has been tendered before the Tribunal by Ramani to demonstrate that the Sharmas are in occupation of the flat, I have dealt with with the counter affidavits filed by both parties. Prior to the Occupancy Certificate of the building being received, the



Sharmas claim that they were put in possession of the said flat and this they claim on the basis of an agreement executed on 30.06.2020, in favour of their Sharma wives by them, in their capacity as promoters/ the partners of M/s. Uma Constructions. This agreement in clause no.12 has recorded as under:

*“12. The possession has been handed over by the promoter/s to the purchaser/s on the registration of this agreement hereof. The possession of the purchaser has been absolute.”*

Admittedly, this document itself is the bone of contention between the parties as it is strongly argued on behalf of Ramani that this document could not be executed behind his back as it was only executed by the two Sharma brothers in favour of their own wives, when allegedly there was a refusal to produce the agreement executed in the month of April 2013 transferring flat no.1301 in favour of Sharmas.

50. In any case, the fate of the document dated 30.06.2020 though in the form of a registered Sale Agreement is the subject matter of the arbitration proceedings and its legality and propriety will have to be determined during the course of the arbitration proceedings. The argument of the Sharmas that they were put in possession by the said agreement from the date of execution of the registered Sale Deed, is an argument to be tested by the Arbitrator.

51. As regards the occupation of the said flat, the learned Arbitrator has rightly recorded that the photographs of the dish antenna, electricity consumption, A/c installation, and the



lights being on at night cannot be considered as findings of its usage and therefore the Sharmas deserve the benefit.

The Sharmas have also categorically defended in their affidavit that they may be in possession of flat no.1301 but they are not in occupation of the said flat. The learned Arbitrator has, therefore, rightly directed the Sharmas and their wives to hand over the keys of the said flat within a period of one week.

52. The moot question that arises for consideration and which is vehemently argued by the learned Senior Counsel Mr Sharan Jagtiyani, as well as Mr Cama, is about the power exercised by the Arbitrator, in appointment of the Receiver and whether merely alleging breach of an earlier order passed by the Tribunal would justify the appointment of a private Receiver.

Ms Jeejeebhoy appearing for Ramani and supporting the second impugned order dated 17.05.2022 passed by the Arbitral Tribunal appointing the Receiver to take possession of the entire premises, would submit that the said order was necessitated in the background facts in order to safeguard the interest of both the parties, pending the hearing and determination of the arbitration proceedings. She would submit that it is a settled position of law that the appointment of a Receiver is justified in the peculiar circumstances where it appears to the authority exercising discretion that the assets and properties of the partnership firm should be prevented from being wasted and be kept in the custody of an impartial person.



Relying upon the precedent as laid down in the case of *Iqbalnath Premnath Anand V/s. Rameshwarnath Premnath Anand and Anr.*<sup>1</sup>, Ms Jeejeebhoy would submit that in the said case before the Court, in view of the approach of the defendants, with a clear finding being recorded that the defendants had effectively kept the plaintiff out and are arrogating to themselves from the ownership of the partnership business, the Court had deemed it necessary to appoint a Receiver.

She would specifically submit that in order to protect and safeguard the business of the partnership firm, pending the winding up of its affairs and settlement of accounts between the partners, it is necessary, that the Receiver is appointed for such business and this is a normal relief which would be granted in such a scenario and, in this case, the scenario being particularly worst since Sharmas have acted in utter dereliction of the earlier orders passed by the Tribunal and their approach would spell out a possibility, that they will deal with the property of the firm and, if they do so, at the end point, when the firm is to be dissolved, the firm may not be in a position to meet its debts and liabilities, which otherwise are mounting on account of delay in the project.

53. Per contra, Mr Jagtiani, learned Senior Counsel for Sharma wives and Mr Cama representing Sharma brothers are extremely critical about the exercise of power by the learned Arbitrator, which though being a discretionary relief did not justify the appointment of an Arbitrator. They would invite my

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1 1976 SCC OnLine Bom. 68



attention to the settled proposition of law as set out by various precedents revolving around Order 40 Rule 1 of CPC, which would justify the power to appoint a Receiver not only on the ground that it is just and convenient for the parties but also in a situation of eminent danger and/or waste of the property. It is submitted by Mr Jagtiani that a finding being rendered by the Tribunal that the Sharmas are not in occupation, as no proof has been tendered to establish the said aspect, the Tribunal could not have exercised the discretion in favour of Ramani, by appointing a Receiver over the entire property. The submission advanced on behalf of the Sharmas is, the Tribunal has arrived at a decision to appoint a Receiver, on the basis of its own assumption and there is a gross error in the order of the Tribunal, which deserved to be rectified by this Court by exercising its power under Section 37 of the Arbitration and Conciliation Act.

54. It is no doubt true that the scope of the power to be exercised by this Court under Section 37 is limited, as it is a settled position of law that the Arbitral Tribunal is the final Tribunal on facts as well as in law and not every error, factual or legal which falls short of perversity would permit interference by the Court either under Section 34 or 37 of the Act. It is equally well settled that the ultimate view of the Tribunal on any issue concerned, so long as the view is plausible and not merely possible, the Court would loath to interfere therewith. But it is equally well settled that when the finding by the Tribunal is either contrary to the terms of the contract between the parties or ex-facie perverse, interference



by the Court is warranted and also justified. True it is that the Court will not substitute the view of the Arbitrator but in a case where it is demonstrated that the view is so thoroughly implausible, that it would constitute perversity and patent illegality, then definitely the Court would exercise its power under Section 37 and it is always permissible to pass a workable order.

The settled position of law as regards the exercise of discretion vested in the Court is clearly spelt out in *Wander Ltd. & Anr. V/s. Antax India Pvt. Ltd.*<sup>2</sup>, where the position of law has been clarified to the effect that the appellate Court will not interfere with the exercise of discretion by the Court of first instance and substitute its discretion except when the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the Court has ignored the settled principles of law. Though the appellate Court may not reassess the material and seek to reach a conclusion different from the one reached by the Courts below, solely on the ground that if it had considered the matter at the trial stage, it would have come to a different conclusion, and if discretion by the Trial Court is exercised reasonably and in a judicial manner the fact that the appellate Court could have taken a different view may not justify interference with the exercise of discretion.

55. The impugned orders dated 31.03.2021 and 17.05.2022 will therefore have to be tested on the aforesaid parameters.

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2 1990 (Sup) SCC 727



By the first order dated 31.03.2021, the Tribunal though restrained the Sharmas as well as Ramani from creating any further interest in the flats and this obligation was cast upon both of them, also in respect of flat no.1301, which was claimed by the Sharma wives on the basis of a registered document signed by the Sharma brothers, under which the said flat was conveyed to them, when the other partner Sunny Ramani was not kept in the loophole, it was directed that they shall not use, occupy or carry out any fit-out works or sell, transfer, alienate, dispose of, encumber and/or create third party rights in respect of the said flat.

On the change in circumstances, the Tribunal however granted the relief prayed by Ramani for the appointment of a Receiver and the Tribunal by its order dated 17.05.2022, in the form of an interim order appointed a private Receiver to safeguard and protect the disputed flats, which were listed along with the application under Section 17. The Sharmas were directed to hand over the keys of all the disputed flats and the Receiver was directed to complete the balance/unfinished work in the disputed flats through a contractor and he was also entrusted with the work of testing the amenities, plumbing and electrical system and ensure that the MCGM obligations are all discharged so that the premises shall be made ready for occupation.

56. This order being passed on 17.05.2022, the flats came under the control of the Receiver and in respect of the undisputed flats (10 flats plus 1 flat), the possession was



handed over in respect of flat nos.101, 501, 502 and 701. Upon the Occupancy Certificate being issued from the planning authority, it was agreed that the possession of flat nos.301, 302, 401, 402, 1101 and 1102 will be handed over to the respective flat purchasers.

Flat nos.102, 201, 202, 601 belonging to the partnership firm, flat nos.802, 1001 and 1002 claimed by family members of Ramani as bonafide purchasers, flat nos.801, 901 and 902 purported to be Talreja flats, flat nos.1201 and 1202 handed over by Bedis to the Sharmas and flat no.1301 claimed to be in possession of Sharma wives are the flats in dispute.

57. The exercise of power to appoint a Receiver is well settled and in case of *T. Krishnaswamy Chetty V/s. C. Thangavelu Chetty & Ors.*<sup>3</sup>, which is considered to be a classic authority on the law pertaining to the appointment of a Receiver, the broad principles are culled out to the following effect.

*“(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding;*

*(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit;*

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3 AIR 1955 Madras 430



*(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt;*

*(4) ..... It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver.*

*(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disintitiled himself to the equitable relief by laches, delay, acquiescence etc."*

58. In the wake of the aforesaid enunciation of law as well as the law laid down by the highest Court of the Country, it is well settled that the power to appoint a Receiver must justify it's existence. Merely because there is disobedience of an order passed by the Arbitrator, in my considered opinion, would not justify its exercise. The allegations against the Sharmas in respect of breach of an earlier order to the following effect as justified, in particular, the following instances have formed the basis for the exercise of discretion by the Tribunal in its second impugned order:



- (a) Preventing Ramani from accessing the site although Sharma members were in a position to visit the flats;
- (b) Unilateral and surreptitious correspondence by Sharmas regarding undisputed flats even during the pendency of the present application;
- (c) Change in circumstances since the first order passed by the Tribunal.

59. When the second impugned order passed by the Tribunal on 17.05.2022 is carefully perused, I can only observe that the prime factor of change in circumstances was based on contradictory stands adopted by the consenting parties and the Arbitrator has clearly recorded in the impugned order that the argument advanced by Ramani as regards flat no.1301 being put to use by the Sharmas was not of conclusive nature and he deemed it fit to grant benefit of the doubt in favour of the Sharma wives but the learned Arbitrator however denied that argument advanced on behalf of Sharmas that the wives were in possession of the flat though not occupation and the finding is rendered that they were neither in possession nor in occupation of flat no.1301 and until the Occupancy Certificate was obtained there was no question of anyone being in possession or occupation, even for fit-out works. The Occupancy Certificate being granted on 14.03.2022, it is held by the Tribunal that thereafter no possession is made over to the wives.

60. As regards the notices being issued unilaterally to Talreja in respect of flat nos.801, 901 and 902, though it is held by the Tribunal that issuing the termination notices to Talreja amounted to “dealing with” the said flats and a peculiar



situation was noticed by the learned Arbitrator, where one partner was objecting to the termination and other partner claimed that the termination is valid, as the dispute was in respect of the balance amount to be paid. The difference between the amounts staked by the two contenders is barely of some lakhs as against the admitted consideration paid by Talreja as against the flats. Whether the termination of Talreja is valid or invalid or whether a partner could unilaterally terminate the registered agreement is a question which was left open by the learned Arbitrator and the learned Arbitrator rejected the relief of handing over the flats of Talreja against the deposit as may be considered by the Tribunal to be appropriate. The Tribunal refused to hand over the possession of flats to either of the partners and recorded that the possession of these flats will have to be protected pending the arbitration proceedings.

61. Undoubtedly, the Tribunal recorded the breaches committed by Sharmas, in not abiding by it's earlier direction of giving the accounts, as a result of which the statement of accounts of the firm could not be drawn by the Chartered Accountant.

However, only for the aforesaid reason, the Arbitrator could not have exercised his discretion in appointing the Court Receiver, which relief was refused in the earlier round of litigation, in the given facts. When the first order was passed by the Tribunal on 31.03.2021, flat no.1301 was already alleged to have been conveyed in favour of the Sharma wives by the



Sharma brothers and when the Tribunal deemed it appropriate to impose a condition upon the Sharmas not to occupy the said flats, that served the purpose and interest of the firm, as ultimately whether the registered agreement for sale without approval from Ramani had really conveyed the property in favour of Sharma wives is a question required to be determined by the Arbitrator during the proceedings pending before him for adjudication.

62. The exercise of discretion to appoint a Receiver must be a judicial exercise, which would necessarily be justified in the given circumstances for protecting the rights of the parties and for meeting the ends of justice. The two terms are not a mere projection but the conditions must be made out to justify the exercise of the power. The allegation that Ramani was excluded from partnership business and the Sharmas are not willing to share any information, documents and data that may pertain to the firm cannot be a ground for the appointment of a Receiver. The deadlock in the firm definitely cannot be resolved by appointing a Receiver and merely because one of the parties has allegedly committed a breach of the earlier order passed by the Tribunal would also not justify the appointment of a Receiver, which power will have to be exercised only when it appears that the property or the assets of the firm are being wasted or mismanaged. The partnership between Ramani and Sharmas was restricted to the development of one building and now on 14.03.2022, the Occupancy Certificate is also received. The undisputed flats are already handed over to the prospective purchasers and as regards the flats under dispute, independent



petitions are also filed by the purchasers, who claim appointment of a Receiver for the purpose of carrying out the work of completion of the building.

63. The aforesaid circumstances in my considered opinion do not justify the appointment of a Receiver. Ramani can always take recourse to the appropriate remedies available to him by moving an application before the Tribunal as and when the circumstances arise and seek appropriate directions. The appointment of the Receiver need not be further continued as the Receiver has served the purpose by ensuring that the construction of the building is completed and now the Occupancy Certificate is also granted. The undisputed flats are already delivered to the purchasers and as regards the disputed flats the Arbitrator is expected to resolve the dispute at the earliest as it is not only the Sharmas and Ramani, the two partners who are the parties to the dispute but because of their dispute, the other petitioners, who are the purchasers of the distinct flats are also facing serious concern as despite they having parted with different considerations towards the purchase of the flat, the flats cannot be handed over to them.

The Receiver, till date, has also exercised his control over the disputed flats, but now since they are identified, both the parties shall maintain status-quo as regards the disputed flats and shall not create any third party interest or any encumbrances therein, as directed by the first order passed by the Tribunal on 31.03.2021. Though the other reliefs sought



by Ramani are rejected, no proceedings are filed by Ramani, challenging the said order.

64. As a result of the aforesaid discussion, by continuing the first order passed by the Arbitrator on 31.03.2021, continuing the restraint upon the Sharmas and Ramani from dealing with, selling, transferring, alienating, disposing off, encumbering and/or creating third party rights in respect of the assets of the firm and in particular, flat nos.102, 201, 202, 601, 802, 1001, 1002 and 1301 in Hamrahi building, the order dated 31.03.2021 is upheld.

As a result, Comm.Arbitration Petition No.185 of 2022 is dismissed.

Comm.Arbitration Petition No.264 of 2022 and Comm. Arbitration Petition (L) No.16413 of 2022 stand allowed by setting aside the impugned order dated 17.05.2022, appointing the Receiver in respect of “Hamrahi Building”, including flat no.1301 in possession of the Sharmas.

65. Comm.Arbitration Petition No.7131 of 2022, which is connected with the above proceedings is filed by the three petitioners, who claim that they are entitled for the flats in the redeveloped “Hamrahi Building” under the original “Development Rights Agreement” dated 03/09/2009 and they allege that respondent no.1-Uma Constructions alongwith it's partners have failed to complete the redevelopment work and



have neglected their statutory duty by not registering themselves with Maharashtra Real State Regulatory Authority.

The petitioners refer to the arbitration clause contained in the "Development Rights Agreement" dated 03/09/2009 and have approached the Court, seeking appointment of Court Receiver in respect of the suit property and/or the premises, including flat nos.802, 1001, 1002, 1301 in the premises of the new Hamrahi Building, which is in direct or indirect possession of M/s. Uma Constructions and it's partners. They also seek a restraint order against the firm and it's partner from creating any third party interest/rights in the suit flats.

The petitioners allege that during the pendency of the redevelopment project the Sharmas and Ramani executed a Deed of Transfer on 26.04.2016 with respect to the Hamrahi Building and the respondent nos.2 & 3, that is the Sharmas and Ramani, accrued the development rights under the original agreement to which M/s. Uma Constructions was a confirming party. It is the specific case of these purchasers that flats of the original members of Hamrahi building were acquired by the partners of the firm and by creating a charge on these flats to be attached and sold under the supervision of the Court Receiver and moneys to be utilised for completion of Hamrahi Building and for compensating the petitioners and other members of the Hamrahi Cooperative Housing Society.

66. Since I have set aside the direction of the Arbitrator in appointing the Court Receiver, in respect of the suit property, I



am not inclined to grant prayer clause (a) in the above petition filed by the respective petitioners, but I deem it appropriate to restrain the respondent nos.1 to 4 in the said petitions from dealing with, disposing of, selling, transferring, alienating, encumbering or creating any third party rights in respect of the unsold flats which include the disputed flat nos.802, 1001, 1002 and 1301 in the newly constructed "Hamrahi Building".

67. Conferring the liberty upon the respective parties to move the Arbitrator in case of any exigency arising in future, the learned Arbitrator is directed to conclude the arbitration proceedings expeditiously and, in any case, within a period of 6 months from today or on or before 31.12.2023 whichever is earlier. The Commercial Arbitration Petition Nos.264/22, 185/22 and Comm.Arbitration Petition (L) Nos.16413/22 and 7131/22 stand disposed of.

68. Commercial Arbitration Petition Nos.8869/2020, 8860/2020 and 8861/2020, which seek a relief of payment of rent/compensation are separated and directed to be listed for hearing on 12.06.2023.

69. As far as Contempt Petition bearing CPCDL No.6695/2022 is concerned, I deem it appropriate to issue notice to the respondents, who shall file the responses within a period of 8 weeks from today and the Contempt Petition is de-tagged from the bunch of Arbitration Petitions, which are disposed of by the present order.

( SMT.BHARATI DANGRE, J. )