

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 27 OF 2015

Shree Ganesh Developers ... Applicant
Versus
Pant Nagar Ganesh Darshan Cooperative
Housing Society Limited ... Respondent

Mr.V.M. Vaghela for the Applicant.
None for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 26TH FEBRUARY, 2015

P.C.

1. The Applicant – Shree Ganesh Developers has filed the above Arbitration Application against the Respondent – Pant Nagar Ganesh Darshan Cooperative Housing Society Limited under section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for appointment of a second Arbitrator to resolve the disputes arisen between the parties under the Development Agreement dated 2nd February, 2006 (Exhibit-A to the Application).
2. None appear for the Respondent though served.
3. Applicant is a registered partnership firm, carrying on business of development of properties. The Respondent is a cooperative housing society. The Applicant and the Respondent have entered into a

Development Agreement dated 2nd February, 2006, whereunder the Petitioner agreed to develop the property of the Respondent on the terms and conditions mentioned therein. Clause 41 of the said Agreement pertains to arbitration and the same is reproduced hereunder :

“Any Dispute, difference or question at any time arising between the parties or their representatives in respect of construction of these presents hereto in respect of the development work shall, be referred to the Arbitration of two persons one to be appointed by party of first and second part jointly and the other by the party of the third part. The Arbitrators shall appoint an umpire before entering upon the reference. The provisions of Arbitration and Conciliation Act, 1996 shall be apply to such reference”.

4. Since disputes arose between the parties, the Petitioner through its Advocates letter dated 25th September, 2013 invoked the arbitration clause and appointed Mr. Dharam Sharma, Advocate, High Court as their Arbitrator. By the said letter, the Advocate for the Petitioner called upon the Respondent to appoint an Arbitrator within a period of 30 days so that both the Arbitrators can appoint the third/presiding Arbitrator as per the provisions of Arbitration and Conciliation Act, 1996.

5. The Respondent through its letter dated 21st October, 2013 refused to refer the disputes to arbitration on the ground that they

apprehended that the Petitioner can go to any extent and pressurize the members of the Respondent.

6. From the aforestated facts, it is clear that there exists a valid agreement between the parties to have their disputes, arising out of the agreement dated 2nd February, 2006 (Exhibit-A to the Application) referred to arbitration. The Applicant has invoked the arbitration agreement by its letter dated 25th September, 2013. However, the Respondent failed to appoint the second Arbitrator and refused to refer the disputes to arbitration on an untenable ground that they apprehended that the Petitioner can go to any extent and pressurize the members of the Respondent

7. It is therefore clear that the Respondent has failed to appoint an Arbitrator to resolve the disputes between the parties. Hence, the following order :

i. Mr. Karl Tamboly, Advocate is appointed as a second Arbitrator to decide the disputes between the parties arising out of the Agreement dated 2nd February, 2006. The two appointed Arbitrators will appoint the third Presiding Arbitrator.

The above Arbitration Application is accordingly disposed of.

(S.J. KATHAWALLA, J.)