

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISCELLANEOUS CIVIL APPLICATION NO.461/2014

M/s. Shriniwas Associate,
through its Proprietor
Shri Pravin Prabhakar Tijare,
R/o 503, Swojas Paradise,
80/2, Baner Residency
Baner Road, Aundh,
Pune 411 007.

..Applicant.

..Versus..

1. M/s. Chandandevi and Sons Pvt. Ltd.,
having its Registered office at 602,
Nikalas Tower, Central Bazar Road,
Ramdaspath, Nagpur - 12.
2. Mr. Gopal Laxman Kondawar,
R/o 5th Floor, Hare Krishna Enclave,
Behind Centre Point School,
Ramdas Peth, Nagpur.
3. Mr. Sanjay Laxman Kondawar,
R/o 601, Kalyani Apartment,
108, Farmland, Ramdas Peth,
Nagpur - 440 012.
4. Mr. Rakesh Shankar Satpute,
602, Nikalas Tower, Central
Bazar Road, Ramdaspath,
Nagpur -12.
5. Mr. Ajay Narayanrao Deshpande,
R/o Q9, Laxminagar, Nagpur.

6. M/s. Jagdamaba Realtors Pvt. Ltd.,
having its Registered office
at 602, Nikalas Tower,
Central Bazar Road,
Ramdas Peth, Nagpur - 12.
7. Mrs. Varsha Gopal Kondawar,
R/o 5th Floor, Hare Krishna Enclave,
Behind Center Point Hotel,
Ramdaspath Nagpur - 440 012
8. Mugdha Mukewar,
R/o 602, Nikalas Tower,
Central Bazar Road, Ramdaspath,
Nagpur - 12.
9. Mr. Nanaji Laxman Kondawar,
R/o 3rd Floor, Harekrishna Enclave,
Behind Center Point Hotel,
Ramdaspath, Nagpur -12.
10. Mr. Vishal Nanaji Kondawar,
R/o 3rd Floor, Harekrishna Enclave,
Behind Center Point Hotel,
Ramdaspath, Nagpur - 12.
11. Mrs. Jaylaxmi Sanjay Kondawar,
R/o 601, Kalyani Apartment 108,
Farmland, Ramdaspath,
Nagpur - 440 012.
12. Mr. Ravi Narayan Deshpande,
R/o Q9, Laxminagar, Nagpur.

..Non-applicants.

Shri D.V. Siras, learned advocate for the applicant.

CORAM : Z.A. HAQ, J.

DATE : 31.8.2015

ORAL JUDGMENT

1. Heard Shri D.V. Siras, learned advocate for the applicant. None appears for the non-applicants. This Court by the order dated 28th November, 2014 permitted applicant to serve the non-applicants by publishing the notice in news paper. The applicant has accordingly published the notice in newspaper. The application was listed before the Court on 9th March, 2015. As nobody appeared for the non-applicants, this Court had adjourned the matter granting an opportunity to the non-applicants.

2. **Rule.** Rule made returnable forthwith.

3. The grievance of the applicant is that the non-applicants have not taken steps as per the agreement dated 20th July, 2011 because of which the applicant has suffered loss. The learned advocate appearing for the applicant has pointed out the Clause (26) of the agreement dated 20th July, 2011 which reads as follows :

“(26) That it is agreed by and between the parties hereto that any dispute arising between the parties hereto shall be referred to the Panel of Arbitrators one to be appointed by each of the parties hereto. The Arbitrators will have the authority and power to - (A) Interpret the terms of this agreement, (B) To settle the dispute in respect of any aspect regarding the construction and sale of Apartment, (C) To settle the complaint regarding construction, etc. The parties hereto are also at liberty to refer any other matter between them to the panel of Arbitrators and the panel of Arbitrators shall decide the same and the

award of Arbitrators shall be final and conclusive and binding on the parties hereto. In view of this agreement regarding Arbitration, the parties hereto specifically agree not to approach any court of law or Consumer Dispute Redressal Forum/Commission etc. without first availing the Arbitration Proceedings."

4. It is submitted that the dispute raised by the applicant falls within the purview of Clause (26) of the above referred agreement and, therefore, it has to be resolved by arbitration. It is submitted that the applicant had given notice dated 24th September, 2013 to the non-applicants by speed post acknowledgement due pointing out his grievance and proposing the name of Shri Amolkumar Popatrao Jadhao advocate R/o Pune as the Arbitrator and calling upon the non-applicants to propose the name of the Arbitrator to be appointed by the non-applicants. It is submitted that the non-applicants have received the notice, however, they have neither given reply to the notice nor have taken any steps in the matter. It is submitted that after waiting for considerable time, the applicant has approached this Court.

5. After hearing the learned advocate for the applicant and examining the documents filed on the record of the application, I am satisfied that the dispute raised by the applicant, *prima facie*, is to be resolved by the Arbitrator. The applicant proposed the name of Arbitrator and called upon the non-applicants to appoint Arbitrator as required by Clause (26) of the agreement, however, the non-applicants

have not taken any steps in the matter. Therefore, this Court is required to exercise the jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996. As per the Clause (30) of the agreement dated 20th July, 2011, the dispute between the parties has to be resolved at Nagpur. *Prima facie*, I find that the claim made by the applicant is a live claim and cannot be said to be a stale claim. Hence the following order :

- (i) Shri A.P. Dehspande, former Judge of this Court is appointed as Arbitrator to resolve the dispute between the applicant and the non-applicants.
- (ii) The applicant and the non-applicant shall pay fees of the learned Arbitrator as would be determined by him.
- (iii) In addition, the applicant shall deposit Rs.1,00,000/- (Rs. One Lakh Only) with the Registry of this Court within 4 weeks towards the security for the fees of the learned Arbitrator.
- (iv) The applicant shall also deposit Rs.5,000/- (Rs. Five Thousand Only) with the Registry of this Court towards processing charges within four weeks.
- (v) The application is allowed in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE