

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

MISC. CIVIL APPLICATION NO.633 OF 2015

(Mrs. Ashwini Vilaschandra Johari ..vs.. M/s. Yogda Constructions and Associates and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 19-10-2015

Heard Shri U.A. Gosavi, learned Advocate for the applicant.

None appeared for the non-applicants on 09-10-2015. The matter was adjourned. Today again, none appears for the non-applicants.

2. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 praying that the arbitrator be appointed to resolve the dispute between the parties.

3. The contention of the applicant is that the non-applicants have not abided by the terms of the agreement dated 07-04-2014 and the cheque given by the non-applicants in part performance of the agreement came to be dishonoured. It is pointed out from paragraph 9 of the application that the applicant made attempts to get the matter settled amicably, however, the non-applicants did not respond and therefore, notice dated 11-05-2015 came to be issued proposing the name of Shri

P.G. Palshikar, Former Judge of this Court, as the Arbitrator, as per Clause 25 of the agreement dated 07-04-2014, however, the non-applicants did not give any reply in the matter. It is submitted that the applicant had approached the learned Principal District Judge by filing an application under Section 9 of the Arbitration and Conciliation Act, 1996, in which an order has been passed on 04-04-2015 restraining the non-applicants temporarily from creating any third party interest in the suit property and temporarily restraining the non-applicants from acting under the General Power of Attorney and Development Agreement dated 07-04-2014.

4. Shri U.A. Gosavi, learned Advocate has submitted that the dispute between the parties is covered by Clause 25 of the agreement, that the claim made by the applicant is a live claim and that the place of arbitration is Nagpur. These submissions are to be prima facie accepted.

5. The non-applicants have chosen to keep out of these proceedings.

6. Hence, the following order :

(i) Shri A.P. Deshpande, Former Judge of this Court is appointed as Arbitrator to resolve/decide the dispute between the parties.

(ii) The applicant shall deposit Rs.1,00,000/- with

the Registry of this Court within four weeks, towards the security for the fees of the learned Arbitrator. This amount shall be kept with the Registry of this Court till the arbitration proceedings are terminated.

(iii) In addition, the applicant and the non-applicants shall pay the fees of the learned Arbitrator as would be determined by him.

(iv) The applicant shall deposit Rs.5,000/- towards processing charges, with the Registry of this Court within four weeks.

7. The application is allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

pma