

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****ARBITRATION PETITION NO. 26 OF 2016**

1. Ramesh Ramchandra Kalyankar,)
 Age : 58 yrs., Occupation : Business,)

2. Rohini Ramesh Kalyankar,)
 Age : 54 yrs., Occupation : Business)

3. Rachana Ramesh Kalyankar,)
 Age : 31 yrs., Occupation : Business)

4. Rasik Ramesh Kalyankar,)
 Age : 28 yrs., Occupation : Business)
 All having address at 803, Cosmos,)
 Sector 11, CBD Belapur,)
 Navi Mumbai 400 614)

..... Petitioners

VERSUS

1. Suresh K. Haware,)
 An adult, Occupation : Business,)

2. Sanjay K. Haware,)
 An adult, Occupation : Business,)

3. Pravin K. Haware,)
 An adult, Occupation : Business,)
 All having address at 416, Vardhman)
 Market, Sector 17, Vashi,)
 Navi Mumbai 400 705)

4. Haware Engineers & Builders Pvt.Ltd.)
 A company incorporated under)
 Companies Act, through its Directors)
 the Respondent Nos. 1 to 3 above)
 having its address at)
 416, Vardhman Market, Sector 17,)
 Vashi, Navi Mumbai 400 705.)

..... Respondents

**ALONGWITH
ARBITRATION PETITION NO. 27 OF 2016**

1. Ramesh Ramchandra Kalyankar, Age : 58 yrs., Occupation : Business,	))	
2. Rohini Ramesh Kalyankar, Age : 54 yrs., Occupation : Business All having address at 803, Cosmos, Sector 11, CBD Belapur, Navi Mumbai 400 614	)))))	 Petitioners

VERSUS

1. Suresh K. Haware, An adult, Occupation : Business,	))	
2. Sanjay K. Haware, An adult, Occupation : Business,	))	
3. Pravin K. Haware, An adult, Occupation : Business, All having address at 416, Vardhman Market, Sector 17, Vashi, Navi Mumbai 400 705	)))))	
4. Haware Engineers & Builders Pvt.Ltd.) A company incorporated under Companies Act, through its Directors the Respondent Nos. 1 to 3 above having its address at 416, Vardhman Market, Sector 17, Vashi, Navi Mumbai 400 705.	)))))))	 Respondents

Mr.Rajiv Patil, Senior Advocate, i/b. Mr.Dushyant Purekar for the Petitioners.

Mr.Nishant Tripathi, i/b. M.Tripathi & Co. for Respondent nos. 1 to 4.

CORAM : R.D. DHANUKA, J.

DATE : 1st JULY, 2016

JUDGMENT

By these two arbitration petitions filed under section 11(6) of the Arbitration and Conciliation Act, 1996 the applicants in both these matters seeks appointment of arbitrator in terms of clause 29 of the agreement entered into between the parties.

2. Learned senior counsel appearing for the petitioners invited my attention to the clause 29 of the agreement and also the correspondence entered into between the parties. He submits that both the parties have suggested two different names. The respondents however have not agreed to the name suggested by the petitioners.

3. The arbitration petitions are opposed by the respondents on the ground that since there was no consensus on the name of the learned arbitrator between the parties, the said arbitration agreement referred in clause 29 of the contract has automatically become inoperative and thus disputes and differences between the parties shall be subject to the court situated at Karjat, Thane which alone has jurisdiction to entertain and try the dispute between the parties.

4. Clause 29 of the agreement is extracted as under :-

29. All Disputes, claims, questions and difference whatsoever between the parties hereto arising out of or in connection with or incidental to or touching this Agreement or the construction or application thereof or any clause or thing herein contained or in respect of any account and duties, responsibilities and obligations of either party hereunder or as to any act or omission of any party or as to any other matter in anyways relating to these presents or the rights duties and

liabilities of either party under these presents shall as far as it is possible be settled by mutual discussions failing which such differences or disputes shall be referred to and settled by Arbitration to be conducted in accordance with the Indian Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof for the time being in force. In case if the parties hereto cannot come to a unanimous decision regarding the sole Arbitrator then and in that event this clause shall automatically become inoperative and the dispute or differences shall be subject to the court situated in Karjat/Thane who shall have the jurisdiction to try and entertain the same.

5. A perusal of the correspondence annexed to the arbitration petition indicates that both the parties have suggested two different names of the proposed arbitrators. The parties however could not arrive at an unanimous decision regarding the name of the sole arbitrator out of the names suggested by each other. A perusal of clause 29 of the contract clearly indicates that if the parties cannot arrive at the name of the sole arbitrator, arbitration agreement would become inoperative and would cease to exist. It is further provided in the said clause that in that event the disputes and differences shall be subject to the jurisdiction at the Civil Court in Karjat/Thane.

6. In my view the arbitration agreement being conditional and since the mandatory pre-conditions prescribed in the arbitration agreement not having been satisfied, the arbitration agreement became inoperative and does not exist. Since arbitration agreement does not exist, arbitration application under section 11(6) is not maintainable. No arbitrator thus can be appointed in these arbitration petitions filed under section 11(6) of the Arbitration and Conciliation Act, 1996.

7. Both the arbitration petitions are accordingly dismissed. The parties are at liberty to invoke the remedy available under the said clause. No order as to costs.

8. It is made clear that this court has not expressed any views on the merits of the matter.

[R.D. DHANUKA, J.]