

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1005 OF 2014**

Vidya Sahakari Bank Ltd

..Applicant

Vs

M/s Sapre and Company

.. Respondent

Mr.S.C.Wakankar, Advocate for Applicant.

Mr.Kuldeep Nikam, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 11/07/2016

PC:

1. Heard Mr.S.C.Wakankar, learned counsel for the applicant and Mr.Kuldeep Nikam, learned counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C. '), the applicant, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 18.8.2014 passed by the learned Jt.Civil Judge, Sr. Dn., Pune below Exh.17 in Spl. Civil Suit No. 595 of 2014. By that order, the learned trial Judge rejected the application made by the defendant for referring the matter to arbitration as per Section 8 of the Arbitration and Conciliation Act, 1996.

3. Perused the order dated 8.1.2015 and office remark made in pursuance thereof. Office remark shows that matter pertains to Rent Act. In view thereof, I have heard the parties at length.

4. Mr Wakankar submitted that in view of clause 24 of MOU dated 26.5.1999, parties agreed to refer the matter to Arbitration of Mr. Dilip Deshpande, partner of M/s Archway Homes. He submitted that in case any dispute arises in respect of construction of premises, actual possession as also proposed lease deed between the parties, both the parties agreed to refer the dispute for arbitration of Mr. Dilip Dehpande. In view of the mandate of Section 8 of the Act, the learned trial Judge ought to have referred the matter to Arbitration.

5. On the other hand, Mr. Nikam supported the impugned order and submitted that by clause 24 of MOU, the parties agreed to refer the dispute for mediation of Mr. Dilip Deshpande and not for arbitration.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused clause 24 of MOU. As noted earlier, by clause 24 of MOU dated 26.5.1999, in the event of dispute arising between the parties in respect of construction of premises, actual possession and proposed lease deed, the parties agreed to refer the dispute to mediation of Mr. Dilip Dehpande. After quoting clause 24, the learned trial Judge observed that there is no arbitration clause in the MOU. Clause 24 in the MOU is in respect of referring the dispute to mediation of Mr. Dilip Dehpande, and that too, in

respect of construction of premises, actual possession and lease deed. The learned trial Judge further observed that the dispute raised by the plaintiff does not fall in this category.

7. After hearing the submissions advanced by the learned counsel appearing for the parties as also after perusing clause 24, I do not find that the learned trial Judge has committed any error in passing the impugned order. The suit is instituted by the plaintiff for possession of the suit premises as also compensation/rent amounting to Rs. 25,02,600/- and mesne profits of Rs. 5,00,000/- per month. By clause 24 of MOU, the parties agreed for mediation of Mr. Deshpande and not for arbitration. In view thereof, no case is made out for invocation of powers under section 115 of C.P.C. Application fails and the same is dismissed.

(R.G.KETKAR, J.)