

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 242 OF 2016

Raghu Leela Realtors Pvt. Ltd.

..... Petitioner

VERSUS

Virendra Kumar Gupta & Anr.

..... Respondents

Mr.Rajiv Narula, i/b. Jhangiani Narula & Associates for the Petitioner.

Mr.Vinit Mehta, i/b. Mr.Satyan Israni for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 17th MARCH, 2016

P.C.

By this petition filed under section 15 of the Arbitration and Conciliation Act, 1996 the applicant seeks appointment of an arbitrator in place of the erstwhile arbitrator who was appointed by this court and has resigned on 14th July, 2015.

2. By an order dated 19th December, 2015 this court appointed a former judge of Supreme Court as a sole arbitrator in Arbitration Petition No. 278 of 2007 which was filed by the petitioner herein. In view of the baseless and irresponsible allegations made by the respondents against the learned arbitrator, on 16th June 2008, the learned arbitrator resigned.

3. The learned designate of the Hon'ble Chief Justice by an order dated 2nd September, 2010 in Arbitration Petition No.126 of 2009 appointed a former judge of this court as a sole arbitrator in place of the erstwhile arbitrator. The respondents made allegations against the said arbitrator also. The learned arbitrator accordingly resigned on 13th February, 2012. A perusal of the allegations made by the respondents and the order passed by the learned arbitrator clearly

indicates that the allegations made by the respondents against the said arbitrator also were baseless.

4. By an order dated 28th August, 2012, this court in Arbitration Petition No.493 of 2012 with Arbitration Petition No.523 of 2012 appointed another former judge of Supreme Court as a sole arbitrator in place of the erstwhile arbitrator. The third arbitrator appointed by this court resigned on 11th April, 2014 on various grounds mentioned in the said letter.

5. By an order dated 16th June, 2015, this court appointed a former Chief Justice of Allahabad High Court as a sole arbitrator in place of the erstwhile arbitrator who resigned on 11th April, 2014. The respondents made allegations against the learned arbitrator also. The learned arbitrator accordingly resigned on 14th July, 2015. A perusal of the letter addressed by the respondents and the letter dated 14th July, 2015 of the learned arbitrator indicates that even the said allegations made by the respondents were totally frivolous and irresponsible.

6. The petitioner has filed this petition under section 15 for appointment of a substitute arbitrator in place of the erstwhile arbitrator who had resigned on 14th July, 2015.

7. Mr.Narula, learned counsel appearing for the petitioner invited my attention to all the above referred orders passed by this court/designate of the Hon'ble Chief Justice appointing four arbitrators so far who had resigned due to various reasons referred to aforesaid. Out of four arbitrators, three arbitrators resigned because of the frivolous and baseless allegations made by the respondents against the learned arbitrators.

8. The respondents have filed affidavit in reply in the present proceedings on 14th March, 2016 and tendered the said affidavit across the bar today and served a copy thereof upon the learned counsel appearing for the petitioner in court. Mr.Narula proceeded with the matter on the basis of denial of the allegations which were contrary to what was stated in the petition.

9. When this court called upon the learned counsel appearing for the respondents to respond to the submissions made by the learned counsel for the petitioner, it is submitted that the learned advocate on record will give response to the submissions made by the learned counsel for the petitioner and requested this court to keep the matter back. This court accordingly kept the matter back to enable the learned counsel to contact the learned advocate on record. After 15 minutes, the learned counsel informs the court that the learned advocate on record is busy in arbitration and will not be able to make any submissions. He however left it to the discretion of the court to pass appropriate order in the matter.

10. Mr.Narula, learned counsel for the petitioner fairly invited my attention to the issue of territorial jurisdiction raised by the respondents in the affidavit in reply. He submits that insofar as other objections raised in the affidavit in reply are concerned, the same are on merits which cannot be gone into at this stage by this court while considering the application under section 15 of the Arbitration and Conciliation Act, 1996.

11. With the assistance to the learned counsel for the petitioner I have perused the affidavit in reply filed by the respondents.

12. Insofar as issue of territorial jurisdiction raised by the respondents in the

affidavit in reply is concerned, a perusal of the said affidavit in reply indicates that except raising the said objection in paragraphs 4 and 5 of the affidavit which is totally vague, the respondent has not pointed out as to how this court has no territorial jurisdiction to entertain the petition.

13. Be that as it may, a perusal of the arbitration petition filed by the petitioner and in particular the averments made in paragraph 16 and a perusal of the description of the suit property described in Ex.B along with the agreement for development executed between the parties on 2nd September, 2003 clearly indicates that the property in respect of which the claim is made by the petitioner is situated at Mumbai. The respondents did not raise any such objection of territorial jurisdiction in earlier four petitions filed by the petitioner in which this court and/or the learned designate of the learned Chief Justice has exercised powers for appointing an arbitrator and/or for appointment of the substitute arbitrator.

14. It is submitted by Mr.Narula, learned counsel for the petitioner that though the agreement in question was signed at Delhi, the same was registered at Mumbai.

15. Since the subject matter of the dispute is the property which is situated at Mumbai in respect of which petitioner seeks to claim reliefs in arbitration, in my view, material cause of action has arisen in Mumbai and thus this court has jurisdiction to entertain this arbitration petition filed under section 15 of the Arbitration and Conciliation Act, 1996.

16. Insofar as other objections raised in the affidavit in reply are concerned, the same are on the merits of the claim which cannot be gone into by this court at this stage in this case under section 15 of the Arbitration and Conciliation Act, 1996.

17. Since erstwhile arbitrator had resigned on 14th July, 2015, a vacancy had arisen which is required to be filled up by appointment of another arbitrator under section 15.

18. I, therefore, pass the following order :-

(a) Since none of the parties have suggested any name for appointment, this court thinks it proper to appoint Shri Justice P.D.Kode, former judge of this court having his office at 204, Vardhaman Chambers, Cawasji Patel Street, Opp. Punjabi Moti Halvai, Fort, Mumbai – 400 001 as a sole arbitrator in place of erstwhile arbitrator and it is ordered accordingly.

(b) It is made clear that the matter shall be proceeded with by the learned arbitrator from the stage at which it was left by the erstwhile arbitrator.

(c) The learned arbitrator shall make an endeavour to dispose of the arbitral proceedings expeditiously. Both the parties are directed to co-operate with each other and with the learned arbitrator in expeditious disposal of the arbitral proceedings.

19. Petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]