

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1834 OF 2015
IN
SUMMARY SUIT NO.241 OF 2015
WITH
SUMMONS FOR JUDGMENT NO.58 OF 2015**

Samrudhi Properties Pvt. Ltd.Plaintiffs

V/s.

Yogesh Ramratan Sarda & Anr.Defendants

Mr.Chirag Mody i/by DSK Legal for plaintiffs.

Mr.Pranav Sampat a/w Ms.Savani Gupe i/by Khaitan & Co. for
defendants.

**CORAM : K.R.SHRIRAM,J
DATE : 23.6.2016**

P.C.:-

1 The following order is passed by consent of the parties.

ORDER

2 The defendants have filed the above Notice of Motion for referring the dispute in the present Suit to be referred to arbitration of a sole Arbitrator. The plaintiff agrees to the present Suit being referred to arbitration of a sole Arbitrator. Accordingly, by consent of parties, Mr.Cyrus Ardeshir Advocate is appointed as an Arbitrator to decide and adjudicate all disputes and differences in the proceedings in the present suit.

3 The counsel for the plaintiff submits that the plaintiff will be entitled to join the principal borrower as party to the arbitration proceeding. The plaintiff submits that the defendants have in para-5 of the Affidavit in support of the Notice of Motion submitted as under :-

"It is therefore submitted that the Loan Agreement, Personal Guarantees, Undertaking cum Indemnity for post-dated cheques and the cheques themselves are all interlinked and interwoven for the purpose of the primary transaction between the plaintiff and Borrower under the Loan Agreement. It is submitted that neither the Personal Guarantees nor the cheques are standalone agreements but are interlinked and executed to secure the underlying transaction i.e., the Loan Agreements. Under the circumstances, Clause 13.15 of the Loan Agreements i.e., the Jurisdiction Clause containing the Arbitration clause would be applicable to all other instruments and/or documents executed in continuation of the Personal Guarantees and/or Loan Agreement. Under the circumstances, plaintiff ought not to be permitted to dissect the instruments and/or documents to evade the effect and operation of arbitration clause. It is submitted that the documents, agreements and instruments mentioned above cannot be read in isolation. It is therefore, submitted that the disputes in the present suit require to be referred to arbitration as per the provisions of law."

4 I am not making any observation or comment on this submission of the plaintiff. It is up to the plaintiff to apply to the arbitrator and for the Arbitrator to consider the same on its merits and give a finding.

5 Suit accordingly stands disposed. All interim applications stand disposed. Refund of court fees if any, as per the Rules. No order as to costs.

(K.R.SHRIRAM,J)