

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 775 OF 2016

M/s. Pelican Co-Operative
Housing Society Limited,
through its Secretary, Mrs. Lucia
Ataide Lobo, of major age,
Indian National, resident of YB4,
Pelican Apartments, Fr. Agnelo
Road, Panaji – Goa.

... Petitioner

Versus

1. Shri Shirish Kamat,
Structural Consultant,
UG2, Zarina Towers, near
Ganesh Temple, St. Inez,
Panaji – Goa.

2. Shri Vivek Naik of
M/s. Nevvia Grouts, having
Office at 2nd floor, Gharse
Towers, M.G. Road,
Panaji – Goa.

... Respondents

Shri Rohit Bras De Sa, Advocate for the petitioner.

Shri J. A. Lobo, Advocate for the respondent no.1.

Shri F. E. Naronha, Advocate for the respondent no.2.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 19th July, 2017

ORAL JUDGMENT (Per F.M. REIS, J.)

Heard Shri Rohit Bras De Sa, learned advocate for the
petitioner, Shri J. A. Lobo, learned advocate for the respondent no.1
and Shri F. E. Naronha, learned advocate for the respondent no.2.

2. The above petition takes an exception to the notice issued by the respondent no.1 to the petitioner which is at Annexure B for entering into an adjudication of the disputes between the petitioner and the respondent no.2 claiming to be an arbitrator.

3. Shri Rohit Bras De Sa, learned Counsel for the petitioner points out that on going through the Agreement between the parties it is seen that there is no arbitration clause which entitles the respondent no.1 to proceed with the arbitration. The learned Counsel further points out that the respondent no.1 was the consultant of the respondent no.2 and as such, according to him, the question of the respondent no.1 being an agreed arbitrator does not arise. The learned Counsel further points out that, as such, there cannot be an arbitration dispute to be adjudicated by the respondent No.1 as there is no arbitration clause between the parties. As such, according to the learned Counsel, the impugned notice served on the petitioner by the respondent no.1 is liable to be quashed and set aside.

4. On the other side, Shri F. E. Naronha learned Counsel for the respondent no.2 submits that there is an arbitration clause in the Agreement between the parties and according to him, the respondent no.1 was a named arbitrator in such an agreement. The

learned Counsel also disputes the contention of the learned counsel appearing for the petitioner that the respondent no.2 was a consultant of the respondent no.1. The learned Counsel further submits that in any event this aspect cannot be adjudicated in a Writ Petition under Article 226 of the Constitution of India.

5. We have given our thoughtful consideration to the rival contentions and with the assistance of the learned Counsels, we have also gone through the records. A short point for consideration is whether the respondent no.1 was justified to issue the notice on the assumption that an arbitration clause was existing in the Agreement between the petitioner and the respondent no.2. In the present case, admittedly, the procedure laid under the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in terms of subject agreement has not been followed by the respondent no.2. Apart from that the averments in the petition point out that the petitioner is disputing the existence of an arbitration clause.

6. In such circumstances, the question of the respondent no.2 without first following the procedure laid down in the Arbitration and Conciliation Act, 1996 to appoint an arbitrator in terms of the alleged claim of the respondent no.2 would not at all arise. As such, keeping the right of the respondent no.2 if so advised to

proceed in terms of the Arbitration and Conciliation Act, 1996 and keeping the contention of the petitioner open with regard to their stand that no arbitration clause exists between the parties, the impugned notice is quashed and set aside.

7. Rule stands disposed off accordingly.

8. All the contentions of the parties are left open.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

mv