

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.122 OF 2017

Rahul Ratnakumar Jadhav and Anr.Petitioners

Vs.

Phadnis Properties Limited and Ors.Respondents

Mr. Madhav J. Jamdar for petitioners.
None for respondents.

CORAM : K.R.SHRIRAM, J.

DATE : 15th NOVEMBER, 2017

P.C.:

1 This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996. The arbitration clause 31 of the Agreement dated 5th September, 2012 reads as under :

“31. DISPUTE RESOLUTION

31.1 Both the parties shall have legal rights to seek specific performance of the present Agreement.

31.2 In the event of any dispute, differences or non-compliance arising between the parties hereto with regard to these presents or interpretation thereof and which cannot be mutually resolved within a reasonable time; the same shall be referred to the Arbitration under the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The Arbitration shall be held in the city of Pune and shall be conducted in English language.

31.3 The Courts at Pune alone shall have jurisdiction to try and entertain all disputes between the parties hereto.”

2 Disputes have arisen and petitioners have issued notice invoking arbitration vide communication dated 18th January, 2017, a copy whereof is at Exhibit 'E' to the petition. No reply was received from respondents. The communication has been addressed to respondent nos.1,2

and original respondent no.3, against whom Mr. Jamdar states, the petition has been dismissed pursuant to order dated 13th October, 2017. Mr. Jamdar states that respondent no.2, who is presently lodged in Yerwada Jail, has been served. Petitioners have also filed an affidavit of service of one Gopal S. Pawar affirmed on 10th November, 2017 stating that the current address of respondent no.1 in the MCA website is the same as mentioned in the cause title and despite forwarding a copy of the petition to the said address, the same has been returned with the endorsement “item delivery attempted door locked-intimation served”. In the affidavit of service, it is also stated that when the petition was attempted to be served at the email ID provided in the MCA website, the same could not be served and the message received was “sorry, we are unable to deliver your message to the following address :- neena@phadnisgroup.com”.

3 In my view, since service has been attempted at the registered address and the email ID provided in the MCA website and the same have been returned with the endorsements as mentioned above, it is a good service. Respondents have neither entered appearance nor filed any affidavit opposing this petition. Nobody is present on call either.

4 In the circumstances, petition is allowed and accordingly disposed in terms of prayer clause – (a).

5 Mr. Justice Dilip G. Karnik, former Judge of this Court, having his office at 314A, Commerce House, 140, Nagindas Master Road, Behind Hotel Khyber, Fort, Mumbai – 400 023 and residing at Flat No.B4, Lake View, 1127, Shivajinagar, Model Colony, Pune – 411 016 (Mobile No.9324386697/8275066575, Telephone Nos.020-25651311/020-256513 12, Email ID – dgkarniklaw@gmail.com), is appointed as Sole Arbitrator to arbitrate on all disputes and differences, including counter claim, if any, between the parties arising out of or in connection with or relating to Agreement dated 5th September, 2012.

6 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by petitioners and 50% by respondents and the same shall be subject to cost in the arbitral proceedings.

7 The Arbitrator to communicate to the Advocate for petitioners with copy to respondents the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within four weeks of receiving a copy of this order from petitioners' Advocates or respondents' Advocates.

8 All rights and contentions of the parties are kept open.

9 Liberty to apply.

(K.R. SHRIRAM, J.)