

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

WRIT PETITION NO. 14294 OF 2016

Dombivli Shikshan Prasarak Mandal	...	Petitioner
V/s.		
Shree Educational Trust & Ors.	...	Respondents

- Mr.A.V. Anturkar, Senior Counsel a/w. Ms.Anjali Purav Yajurvedi for the Petitioner.
- Ms.Nivedita Kundagi i/b. Dewani & Associates for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondents.

2] The Petitioner herein is challenging the order dated 28th September, 2016 passed by the 3rd Joint Civil Judge Senior Division, Kalyan, thereby directing the parties to appear before the Arbitrator in view of Clause 36 of the agreement dated 20th July, 2012 to resolve their dispute.

3] As the controversy involved in the matter is to the interpretation of Clause 36 of the agreement dated 20th July, 2012 entered into between the parties, it is necessary to reproduce the said clause. It reads as follows;

“In case of any difference/dispute in relation to the execution of the terms of this agreement or any other dispute, which will occur between the parties, in relation to this agreement, it will be resolved by Shri Rajan Shirodkar and Dr.Abhijeet Desai.”

4] Thus the perusal of the Clause 36 in the agreement makes it clear that the parties to the agreement themselves are directed to act as Arbitrator. It is not disputed that Dr.Abhijeet Desai is presently in the Managing Committee of the Petitioner-Trust; whereas Shri Rajan Shirodkar is the party to the agreement itself. Now the question is whether the parties to the agreement can themselves be the Arbitrators.

5] The submission of learned counsel for the Respondents is that perusal of Clause 36 indicates that the parties had agreed to resolve the dispute by way of arbitration. According to her, the intention of the parties is that these two persons who were to resolve

the dispute, namely, Shri Rajan Shirodkar and Dr.Abhijeet Desai can appoint an independent arbitrator to resolve the dispute. According to her, the very intention of the parties is that the dispute should be resolved by way of arbitration and if the parties themselves cannot resolve it as stated in Clause 36, then they can very well assign the same to third arbitrator.

6] The line of argument advanced by learned counsel for Respondent is though persuasive, it cannot be accepted as Clause 36 does not state so. If the intention of the parties was to that effect, the parties should have clearly stated so in Clause 36 or in any part of the agreement that Shri Rajan Shirodkar and Dr.Abhijeet Desai should appoint some third arbitrator who should resolve the dispute. When the said clause and the agreement is silent about it, this Court cannot put the words in the mouth of the parties to infer that they wanted to engage or to appoint some third arbitrator when in effect they are stating that Shri Rajan Shirodkar and Dr.Abhijeet Desai should resolve the dispute.

7] In such situation, when the parties themselves cannot be the arbitrators, the impugned order passed by the trial Court of

referring the parties to appear before the arbitrator cannot be called as just, legal and correct, hence liable to be quashed. Ordered accordingly.

8] Writ Petition is allowed in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]