

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

COMMERCIAL ARBITRATION APPLICATION NO.50 OF 2017

Homai Mahal Premises Co-operative Society Ltd. Applicant
Vs.
Icon Builders and Developers Respondent

Mr. Vikhil Dhoka a/w Ms. Shyli S. Shetty i/b Solicis Lex for Applicant.
None for Respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 5th DECEMBER, 2017**

P.C.

1. At the outset, applicant seeks leave to strike off Respondent No. 2. Leave granted. Amendment to be carried out forthwith. Re-verification dispensed with.

2. This is an application for appointment of arbitrator under Section 11 of Arbitration and Conciliation Act, 1996, (the said Act). The subject matter is development agreement dated 9th December, 2009 entered into between applicant and respondent. The disputes have arisen between the parties. Agreement provides for arbitration in clause 52 which reads as under :

“All the disputes and differences between the parties hereto in connection with this Agreement and/or these presents and/or with regard to the interpretation of the provisions hereof or any account to be made hereunder or as to any other matter in any way relating to or touching or concerning arising under this Agreement or any part thereof or otherwise howsoever affecting the parties hereto shall be referred to the arbitration of a sole arbitrator if the parties are agreeable to a sole arbitrator or otherwise the Society on one hand and the Developers on other hand

shall appoint their respective arbitrators i.e total two arbitrators who shall appoint a third arbitrator and such arbitration shall be in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment thereof for the time being in force. Such Arbitration shall be held in Mumbai and shall be conducted only in English language.”

3. Applicant gave notice invoking arbitration and suggested the name of one Mr. Simil Purohit, advocate practicing in this Court. In response, respondent has suggested the name of one Mr. Justice S.K.Shah (retired) as sole arbitrator. The respondent though served is not present in Court and there is an affidavit of one Mr. Prashant Girkar affirmed on 6th March 2017 confirming services upon respondent.

4. Having considered the application and the documents annexed thereto, I am satisfied that there is an arbitration agreement and parties also agree that there is an arbitration agreement but are unable to agree upon the arbitrator. Therefore, the following order is passed.

(i) Mr. Farhan P Dubash, an Advocate practicing in this Court having office Address : 105, Bhagyoday, 1st Floor, 79, Nagindas Master Road, Fort, Mumbai-23; Mobile No. 9820506685; Email ID : farhandubash@gamil.com is appointed as Sole Arbitrator to arbitrate on disputes and differences including counterclaim, if any, arising out and/or in connection with and/or relating to development agreement dated 9th December, 2009.

(ii) The fees, administrative expenses, typing charges and venue expenses of the Arbitrator shall be shared equally between parties, i.e, 50%

by applicant and 50% by respondent and the same will be costs in the arbitration proceedings.

(iii) Within three weeks of receiving a communication from the advocate for applicant and/or respondent, the Arbitrator shall give in writing, directly to parties, disclosure as required under Section 11(8) read with Section 12(1) of the said Act.

(iv) All rights and contentions of the parties, except contesting the existence of the arbitration agreement, are kept open.

5. Arbitration Application accordingly disposed.

(K.R. SHRIRAM, J.)