

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

ARBITRATION PETITION NO. 683 OF 2017

Mohd. Ashraf M. Gaus Kadri & Anr.

.. Petitioners

Vs.

Pramod P. Pisal, Proprietor

Unity Land Consultancy & Ors.

.. Respondents

Mr. Mahesh Menon i/b Mahesh Menon & Co. for petitioners.

Ms. Aruna D. Mehta i/b M/s. S. Pathak and Co. for respondent no.1.

Mr. Madhur Surana for respondent no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 6TH DECEMBER 2017

P.C.

1 The counsel appearing for respondent no1 and respondent no.2 both state that they have no objection if this Court grants prayer clauses (a) and (b). Mr. Menon for petitioners requests that prayer clauses (a) and (b) be granted and petitioner be permitted to take out application under Section 17 of the Arbitration and Conciliation Act, 1996 (The said Act) for further reliefs including reliefs as sought in prayer clause (c), (d) and (e). The counsels appearing for respondent Nos.1 and 2 have no objection.

2 Keeping open the rights and contentions of parties herein, petition is allowed in terms of prayer clauses (a) and (b) which read as under :

“(a) that pending the hearing and final disposal of the Arbitration Proceedings, the Respondents, their agents and servants be directed to reserve the petition, Flat, i.e., Flat No. 905, admeasuring 617 square feet of carpet area (including balcony) + 188 square feet usable carpet area situated on the 9th floor, “A” Wing along with Stilt Car parking No.19 (-square feet) of building known as M & M Residency, constructed on the Plot C.T.S. No. 6(pt), S.G. Barve Marg, Kurla (East), Mumbai-400 024, till the final disposal of the Arbitration Proceedings.

(b) that pending the hearing and final disposal of the Arbitration Proceedings, the Respondents, their agents and servants be restrained by an order of this Hon'ble Court from creating third party interest in respect of the petition Flat or any part thereof.”

3 So far as prayer clauses (c) to (e) are concerned, petitioners may file an application under Section 17 of the said Act and respondents may take whatever defence available to them before the Arbitrator and the Arbitrator may dispose of this application in accordance with law.

4 By consent, the following order is passed :-

(a) Mr.Rishabh Shah, an Advocate practicing in this Court having office Address : Building No. 5-7, Rajabhadur mansion, Homi Modi street, Fort, Mumbai 400 023, Tel. No. : 22670857; Email ID : shah55@gmail.com, is appointed as Arbitrator to arbitrate on disputes and differences including counterclaim, if any arising out and/or in connection with and/or relating Agreement dated 22nd March 2012.

(b) The fees, administrative expenses, typing charges and venue expenses of the Arbitrator shall be shared equally between parties, i.e., 1/3rd by petitioners, 1/3rd by respondent no.1 and 1/3rd by respondent no.2, respectively and the same will be costs in the arbitration proceedings.

(c) All rights and contentions of parties are kept open except contesting existence of arbitration agreement and venue of arbitration.

(d) Within three weeks of receiving a communication from the advocate for petitioners and/or respondents, 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.

5 Arbitration Petition accordingly disposed.

(K.R. SHRIRAM, J.)