

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

ARBITRATION PETITION NO.89 OF 2018

M/s. SVR Constructions	...	Petitioner
versus		
M/s. Divine Realtors and Developers	...	Respondent

Mr. Dormaan J. Dalal, for Petitioner.
None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 7th DECEMBER, 2018

P.C.:

1. The above Petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996. The Arbitration Clause reads as under :

“If during continuance of the said MOU business any dispute arises amongst the parties hereto and of their representatives in respect of the terms and conditions mentioned herein above and or any affairs of arbitration as per provision under the Arbitration and Conciliation Act, 1996 or the arbitration force at the relevant time and venue of the arbitration proceeding shall be referred to a sole arbitrator and the venue of such arbitration shall be at Pune.”

2. From the said Clause, it is clear that the parties have agreed that if any dispute arises during continuance of the said MOU business, the parties shall refer their dispute to arbitration. Admittedly, the MOU business is terminated by

termination notice dated 18th April, 2018. Since the parties have specifically agreed that disputes arising between them during 'continuance of the MOU business' shall be referred to Arbitration and admittedly the MOU business is not continuing, it cannot be said that a valid arbitration agreement exists between them as on date to refer the disputes to arbitration.

3. The learned Advocate for the Petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of Branch Manager, Magma Leasing and Finance Ltd. & Anr. V/s. Potluri Madhavilata and Anr., ¹. The subject clause which was before the Hon'ble Supreme Court for consideration is reproduced hereunder :

“22. Arbitration : All disputes, differences, claims and questions whatsoever arising out of this agreement between MAGMA and/or its representatives and/or its assigns on the one hand and the hirer(s) and the guarantor(s) on the other hand touching and concerning these presents or anything herein contained or in any way relating to or arising from these presents shall be referred to a sole arbitrator to be appointed by MAGMA Leasing Limited. The Arbitrator so appointed shall formulate his own procedure and shall be entitled to dispense with filing of pleadings or taking of any evidence and shall be entitled to dispose of the proceedings in a summary manner. The arbitrator shall have summary powers. The award of such arbitrator so appointed shall be final and binding on all the parties to this agreement. Such arbitration proceedings will be at Kolkata. The sole arbitrator shall pronounce the award as expeditiously as possible after entering on the reference or within such time as he may deem

1 (2009) 10 SCC 103

expedient. The pronouncement of the award by the arbitrator in a meeting of the parties fixed after the conclusion of the arbitration proceedings shall be deemed to be the publication of the award and shall be construed as the date of receipt of the award by the hirer(s)/guarantor(s) and MAGMA. The costs and expenses of the arbitration proceedings shall be borne by the hirer(s)/guarantor(s). The arbitrator shall hold his sittings at Kolkata.”

4. The said clause is comprehensive and does not provide that the parties shall refer their disputes to arbitration if the disputes so arises during the subsistence of the contract. In view thereof, the Supreme Court has held that “merely because the contract has come to an end by its termination due to breach, the arbitration clause does not perish nor is rendered inoperative, rather it survives for resolution of disputes arising “in respect of” or “with regard to” or “under” the contract.” In my view, the said decision of the Hon’ble Supreme Court is of no assistance to the Petitioner. In view thereof, the above Arbitration Petition is dismissed.

(S.J.KATHAWALLA,J.)