

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

ARBITRATION PETITION NO.9 OF 2017

Royal Palms Property Pvt. Ltd.)....Applicant
V/s.

Palms Apartment II CHS Ltd.)....Respondent

Ms.Rajni Mishra I/by Intralegal for the applicant.
Mr.Daljeet Singh Lall for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 3.9.2018

P.C.:-

1. The application is filed under Section 11 of the Arbitration & Conciliation Act 1996 (the said Act).

2 Briefly stated, the applicant and respondent had entered into Estate Maintenance Agreement dated 7.6.2013. The flats/office/shop owners who were members of respondent society had agreed to pay to developer of the property and/or agency nominated by the developer, proportionate costs, charges and expenses for the maintenance of company's amenities, facilities, security charges and maintenance of landscaping charges and rent for grant of access road etc. In the agreement for sale executed with each purchaser of units, it was agreed to execute agreement with the society of each building for maintenance of common area to which individual agreement was

drawn and signed. Pursuant thereto Estate Management Agreement was signed under which the applicant was to render various services and the respondent was to pay for the same. Clause-13 is the Arbitration clause and the same reads as under :-

“ARBITRATION : Any differences and disputes of whatsoever nature arising out of this Agreement shall be referred to a Sole Arbitrator as appointed by the Property Managers. Such arbitration shall be held in Mumbai and shall be in accordance with the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment thereof for the time being in force in India. The award of the Arbitrator shall be final and will not be disputed in any Court of Law or before any other authority. The parties hereby authorize the arbitrator to make sure other procedural rules as may be necessary to effectuate the intention of the parties to promptly, inexpensively and amicably resolve any disputes that may arise under this agreement.”

3 As certain disputes arose and according to petitioner there was an outstanding estate maintenance charges amounting to Rs.77,59,040/- payable by respondent to petitioner, petitioner by his Advocate's letter dated 20.10.2016, invoked the arbitration agreement. Respondent through its Advocate's letter dated 13.12.2016 responded and denied that respondent had even entered into Estate Management Agreement with petitioner. In view thereof this application came to be filed.

4 Respondent filed an affidavit of one Rajesh Shetty opposing the application and once again reiterated what was basically stated in the reply to the notice. It was noted that the said Rajesh Shetty did not have any authority from the respondent society and on 7.12.2017 the following order came to be passed :-

“1. There is an affidavit in reply on record signed by one Rajesh Shetty opposing the application. Nowhere in the affidavit is it mentioned, what authority does Rajesh Shetty have from the respondent-society. It does not even indicate anywhere that Rajesh Shetty is an office bearer of the society or even a member of the society. In the verification clause it only states Rajesh Shetty (flat no.313).

2. Mr.Daljeet Singh Lall appearing for respondent undertakes to file copy of the Resolution duly authorizing Mr.Rajesh Shetty to file reply on behalf of the respondent-society. Mr.Daljeet Singh Lall also states that reply having been filed will be confirmed in the form of an affidavit annexing copy of Resolution. This affidavit to be filed and copy served within two weeks from today.

3. Stand over to 11.1.2018.”

5 Petition has got listed today. Ms.Rajni Mishra appearing for the applicant states that no further affidavit has been filed as directed in the order of 7.12.2017. Even the court's noting does not show such affidavit.

6 In the circumstances, I would proceed on the basis that there is no affidavit in reply on record. None of the averments are controverted. The agreement annexed to this application has an arbitration clause as quoted above. Therefore, I am satisfied that there is an arbitration agreement.

7 Ms. Deepti Panda an advocate practicing in this court, having her office at 123, 3rd floor, 24B, Raja Bahadur Mansion, Ambalal Doshi Marg, Fort, 400 001, Mobile No.9892079219, office no.49721742, email : deeptipanda19@gmail.com, is appointed as sole Arbitrator to decide on all disputes arising out of, in connection with and relating to the agreement dated 7.6.2013. All rights and contentions of the parties are kept open except to challenge the jurisdiction of the Arbitrator. The fees, administrative expenses and typing charges if any, shall be shared equally between the parties and the same will be cost in the arbitration proceeding.

8 The Arbitrator to give disclosure in writing as required under Section 11(8) r/w 12(1) of the said Act directly to the parties within two weeks of receiving communication from either of the parties about this order.

9 Application accordingly disposed.

Jahagirdar
Kiran
Ganesh

Digitally signed
by Jahagirdar
Kiran Ganesh
Date: 2018.09.05
18:33:53 +0530

(K.R.SHRIRAM,J)