

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION APPLICATION NO.243 OF 2018**

Kumar Builders Mumbai Realty Pvt. Ltd. ... Applicant

versus

The Chairman/Secretary Apna Ghar

Unit No.5 CHS

... Respondent

WITH

COMM. ARBITRATION PETITION NO.838 OF 2018

Mr. Akash Rebello i/by M/s. Udwadia and Co., for Applicant.

None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 23rd AUGUST, 2018

P.C.:

1. Comm. Arbitration Petition No.838 of 2018 is not on board. Upon mentioning, taken on board.
2. The Applicant – Kumar Builders Mumbai Realty Pvt. Ltd., has filed the above Arbitration Application against the Respondents under Section 11 of the Arbitration and Conciliation Act, 1996, as amended by Arbitration and Conciliation (Amendment) Act, 2015 (the Act) for appointment of a sole Arbitrator to resolve the disputes that have arisen between the parties under the Agreement dated 2nd June, 2008 (Exhibit “A” to the Application).
2. Clause 32 of the said Agreement dated 2nd June, 2008 pertains to arbitration and is reproduced hereunder :

“32. In the event of any dispute or difference arising between the parties out of this Agreement or in the interpretation, construction or meaning thereof or any of the terms and conditions of this Agreement, the same shall be referred to a Sole Arbitrator, to be mutually agreed upon by the Parties hereto, and in the absence of any agreement regarding Sole Arbitrator, the arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 in force or any subsequent amendment or re-enactment thereof. All arbitration proceedings shall take place in Mumbai and the Courts in Mumbai shall alone have the jurisdiction in the matter.”

3. Since disputes arose between the Applicant and Respondent, the Applicant by their Advocate's letter dated 18th December, 2017 invoked the Arbitration clause. The Respondent by their Advocate's letter dated 11th January, 2018 responded to the same. In the said letter, the Advocate for the Respondent, recorded that they do not agree with the name of the sole Arbitrator suggested by the Applicant and that the Applicant should move this Court for appointment of a Sole Arbitrator as per the provisions of Section 11 of the Act. The Applicant is therefore, constrained to file the above Arbitration Application under Section 11 of the Act.

4. Though a copy of the above Arbitration Application is served on the Respondent Society on 26th July, 2018, none appear for the Respondent Society. The Respondent has not filed any Affidavit in Reply opposing the above Arbitration Application. The Respondent has not agreed to the name of the Arbitrator, suggested by the Applicant and has also not suggested the name of any other person to act as

Arbitrator in the matter. It is therefore clear that the Respondents have failed to appoint an Arbitrator to resolve their disputes. Hence, the following order :-

(i) Mr. Nimay Dave, Advocate is appointed as the sole Arbitrator to decide the disputes between the parties arising out of the Agreement dated 2nd June, 2008.

(ii) The disclosure of Mr. Nimay Dave, Advocate under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) is taken on record.

(iii) The parties and/or their Advocates shall appear before the learned Arbitrator in his chambers, on 1st September, 2018 at 11.00 a.m. and obtain necessary directions.

(iv) The learned Arbitrator shall not grant adjournments to the parties unless absolutely necessary.

(v) All contentions of the parties are kept open.

(vi) The cost of arbitration shall initially be borne by the parties equally.

(vii) The venue of Arbitration shall be at Mumbai.

(viii) In view of this order, the above Arbitration Application is disposed of.

(ix) In view of the above order, the learned Advocate for the Applicant/Petition in Comm. Arbitration Petition No.838 of 2018 seeks to withdraw the above Petition filed under Section 9 of the Act with liberty to file a Petition under Section 17 of the Act before the learned Arbitrator. Comm. Arbitration Petition

No.838 of 2018 is disposed of as withdrawn with liberty as sought.

(xi) The Advocate for the Applicant shall forward a copy of this order to the Respondent by hand delivery.

(S.J.KATHAWALLA,J.)

Swaroop
Sharad
Phadke

Digitally signed
by Swaroop
Sharad Phadke
Date:
2018.08.27
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