

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10686 OF 2018

Amrutrao Murlidhar Gondkar and others	... Petitioners
Versus	
The Chief Officer	
Shirdi Municipal Council, Shirdi	... Respondent

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Mr. S. S. Chapalgaonkar, Advocate for petitioners.

Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for respondent.

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CORAM : M. S. KARNIK, J.

DATED : 20th AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the petitioners and learned Senior Counsel appearing on behalf of the respondent.
2. The petitioners are the original plaintiffs. The plaintiffs filed Regular Civil Suit No.100 of 2018 before the trial Court for declaration of the letter issued by the Municipal Council dated 26.03.2018 as illegal and void. Further reliefs are sought in the suit to restrain the respondent from taking possession of the shops constructed by the plaintiffs.

3. It is the case of petitioners that in view of the proposal of the Deputy Director of Town Planning, Shirdi, for development of the petitioners' property, an agreement of 15.01.2008 was entered into between the petitioners and the respondent on certain terms and conditions.

4. The respondent filed an application in the said suit and raised an objection that the suit is not maintainable in view of Clause-25 of the said agreement, which provides for arbitration.

5. The trial Court by impugned order was of the opinion that on reading Clause-25 and the other clauses of the agreement it is clear that the intention is to provide for an arbitration. The trial Court was of the opinion that Clause-25 is nothing but an arbitration clause.

6. The petitioners claim to be the owners of the suit property. The controversy is in respect of Clause-25 of the said agreement dated 15.01.2008. It is the submission of learned counsel for the petitioners that the reading of the said clause indicates that only a mechanism is provided for adjustment of the claim or for mediation of the claim through the Collector in the first instance.

7. Learned counsel for the petitioner would submit that the said clause cannot be read to mean that the parties have agreed to refer

any dispute arising to Arbitration of the Collector. It is his submission that the wordings of the said clause, especially the words that “*if there is dispute between the parties, in the first instance,*” would clearly show that the parties never intended to provide for on arbitration. He would further submit that there is no separate arbitration agreement in writing and even the reading of the terms and conditions of the agreement would not reveal that the intention of the parties was to refer the matter for arbitration in case of a dispute arising.

8. Shri Hon, learned Senior Counsel for the respondent would support the order passed by the trial Court. He invited my attention to the relevant clauses in the agreement. According to him, the dispute pertains to payment of certain sums of money by the petitioners to the respondent Council. He would further submit that the petitioners are not abiding by the terms and conditions of the agreement and in fact, deriving income the user of the property. He would submit that the trial Court correctly interpreted Clause-25 of the agreement to mean that the said clause provides for adjudication of the dispute by an arbitrator.

9. I have heard learned counsel at some length. I have gone through the copy of the plaint. Even the petitioners have agreed that if there is dispute between the parties, in the first instance, the dispute has to be resolved in the manner as laid down in Clause-25 of the

agreement. Learned Senior Counsel for the respondent also says that the dispute in the first instance is to be resolved in the manner as laid down in Clause-25. The controversy is whether the clause provides for an “*arbitration*” or “*adjustment*” of the claim by mediator.

10. Learned counsel for the petitioners in all fairness states that if the dispute is resolved in the first instance in terms of Clause-25, he would withdraw the suit. Learned Senior Counsel for the respondent also does not have any objection if the dispute is resolved in the manner as laid down in Clause-25 in the first instance.

11. Learned counsel for the petitioners on instructions therefore states that the petitioners would withdraw the suit. As the suit itself is to be withdrawn, it is made clear that the Collector to proceed with the resolution of the dispute in terms of Clause-25 of the agreement. In my opinion, the following order would meet ends of justice in the peculiar facts of this case.

ORDER

- (i) The petitioners to apply for withdrawal of the suit within a period of one week from today before the trial Court.

- (ii) The petitioners as well as the respondent to appear before the Collector, Ahmednagar in the proceedings to be conducted as per Clause-25 of the agreement on 04.09.2019 at 12.00 p.m., on which date the Collector to decide the schedule of further hearing of the matter.
- (iii) The Collector is requested to decide the proceedings within a period of three months from the date of the appearance of the parties.
- (iv) As the interim injunction granted by trial Court is still in operation in view of the interim orders of this Court, in the interest of justice, the parties to maintain status-quo till the proceedings before the Collector are decided.
- (v) Learned counsel for the petitioners on instructions states that the petitioners will not create any third party interest or otherwise deal with the suit property till disposal of the proceedings.

- (vi) Needless to mention that it would be always open for the parties to take recourse to the remedies available in law after proceedings before the Collector are decided.
- (vii) It is also made clear that all contentions including the contention whether Clause-25 is an arbitration clause or otherwise, is kept open to be agitated before the Collector. The Collector not to be influenced by any observations of the Trial Court.

12. The writ petition is disposed of with no order as to costs.

[M. S. KARNIK, J.]

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