

IN THE HIGH COURT OF BOMBAY AT GOA**APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 3 OF 2019**

HAFIFA KHWAJA.

... Applicant

Versus

MARIADAS JOSE COUTO AND 2 ORS. ... Respondents

Mr. Neelesh A. Takkekar, Advocate for the Applicant.

Mr. Nikhil G. Dhumatker, Advocate for Respondent Nos.1 & 2.

Mr. S. M. Walawaikar, Advocate for Respondent No.3.

Coram:- M. S. SONAK, J.**Date:- 27th September, 2019****P.C.**

Heard Mr. N. Takkekar, learned counsel for the Applicant, Mr. N. Dhumatker, learned counsel for Respondent Nos.1 and 2 and Mr. Walawaikar, learned counsel for Respondent No.3.

2. On 26.07.2019, this Court made the following order.

“Heard Mr. Takkekar for the Applicant, Mr. Dhumatker for Respondents No.1 and 2 and Mr. Walawaikar for Respondent No.3.

2. The learned Counsel for the Respondents state that in principle they have no objection whatsoever to the appointment of an arbitrator in order to resolve the disputes which have arisen between the parties to the Agreement of Sale dated 2.12.2010. However, Mr.

Walawaikar for Respondent No.3 submits that all legitimate defences of the parties, including the defence that there is no cause of action for any dispute, may be kept open for adjudication by the Arbitrator, if at all an occasion arises for appointment of an arbitrator. Mr. Walawaikar further submits that before the matter is actually referred to arbitration, it will be in the interest of the parties if an attempt is made to sort out the disputes by way of mediation. Mr. Takkekar and Mr. Dhumatker also accept that an attempt can be made to sort out the disputes by mediation before any arbitrator is actually appointed in the matter.

3. Learned Counsel for the parties suggest the name of Advocate Mr. J.P. Mulgaonkar as a Mediator to mediate in the matter.

4. Accordingly, by consent, Mr. J.P. Mulgaonkar is appointed as Mediator in this matter. Parties to appear before the Mediator on 19th August, 2019 at 5.30 p.m. and seek directions. Although this date is being fixed, it is open to the parties to contact the Mediator and seek a date as per his convenience.

5. The Mediator is requested to furnish a report by 23 September, 2019. This matter is posted for further consideration on 27th September, 2019”

3. In pursuance of the aforesaid, learned Mediator has submitted a report informing this Court that the parties have reached the amicable settlement of their dispute in terms of the consent terms which are duly signed before him by all the parties. The consent terms are also produced along with the Mediator's report.

4. Taking into consideration the aforesaid and after satisfying myself that there is an arbitration clause in the agreement between the parties, at the request and with the consent of the learned counsel for the parties, Mr. J. P. Mulgaonkar is appointed as Arbitrator in the matter.

5. Mr. J. P. Mulgaonkar, who is present in the Court, gives consent to be appointed as Arbitrator and states that necessary disclosure as contemplated by Section 12(1) of the Arbitration and Conciliation Act, 1996 will be filed in the course of the day.

6. The parties and their counsel agree to appear before Mr. Mulgaonkar, learned Arbitrator in his chamber on 28.09.2019 at 5.00 p.m.

7. The parties to bear the Arbitrator's fees in accordance with the said Act and/or rules made thereunder.

8. At the request of the learned counsel for the parties, it is clarified that the fees may be paid as may be decided by the learned Arbitrator.

9. The consent terms which are appended to the

Mediator's report are now returned to Mr. N. Takkekar, learned counsel for the Applicant, who states that the parties will file the same before the learned Arbitrator, who can then make award in terms of the consent terms. The original consent terms are returned by retaining the xerox copy on record.

10. The Applicant is further granted leave to seek return of original copy of the Agreement for Sale dated 02.12.2010 from the registry.

11. The application for appointment of arbitrator is disposed of in the aforesaid terms.

12. All concerned to act on the basis of the authenticated copy of this order.

M. S. SONAK, J.

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