

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1539 OF 2019**

Sachin Kelkar.

..Petitioner.

V/s.

The Sole Arbitrator & anr.

..Respondents.

Ms. Anita Castellino I/b. Mr. Pritam D. Joshi, advocate for petitioner.

Mr. Mukesh Gupta I/b. M/s. Solicis Lex, advocate for respondent No. 2.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 12, 2019.

P. C. :

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein is the respondent in Arbitration Proceedings. The Petitioner has approached this Court challenging the order dated 29th October, 2018 wherein the application seeking counter claim has been rejected.

2 In fact, the learned Counsel for the respondent submits that there is no reason to allow the counter claim. In view of the conduct of

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the petitioner, so much so that the petitioner had not deposited arbitration fees. They have stalled the proceedings thereby protracted entire proceedings. The petitioner had even gone to the extent of filing a petition against the sole Arbitrator. The arbitrator has observed that although the statement of defence was filed in July, 2018, the Counter claim was not filed at that time. The sole arbitrator with a view to ensure that there should be fair adjudication of the disputes between the parties on merits, had allowed the application and they were permitted to file statement of defence.

3 In fact, the sole arbitrator has given sound and justifiable reasons for rejecting claim of the present petitioner. There are several orders passed in the present proceedings observing the conduct of the petitioner throughout the proceedings. However, despite that, in the interest of justice, the petitioner deserves to file counter claim on the condition precedent that the arbitral fees are deposited before 5 p.m. of 22/2/2019. In the eventuality that an amount of Rs. 3,25,000/- is not deposited on or before 22/2/2019, the application seeking counter claim would be deemed to be rejected and shall stand rejected.

4 The learned Counsel for the petitioner in the presence of the petitioner and upon instructions gives an undertaking to the Court that

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they would not seek any adjournment in the arbitration proceedings in any circumstances. That they would level no allegation against the sole arbitrator and allow the sole arbitrator to proceed in accordance with law. The counter claim shall be restricted to the compensation to which the Petitioner is entitled and would be claiming without prejudice to the respondent's right. The Petitioner would cooperate with the Sole Arbitrator in order to conclude the arbitration proceedings by 30th May, 2019. The Petitioner shall be liable to pay further arbitral fees.

5 Learned Counsel for the respondent No. 2 submits that this Court (Coram: G.S. Patel, J) vide order dated 10th February, 2017 has observed thus :

“The Society is, therefore, at liberty to enter into negotiation subject to the outcome of the arbitration with any new developer for redevelopment of its premises.”

“There is also no question of Icon Builders “assigning” its rights under the Development Agreement to any new developer. That new development will have to be on a completely fresh start.”

6 The Petition is allowed and disposed of on the above terms.

[SMT. SADHANA S. JADHAV, J.]