

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION (ST) NO. 33607 OF 2018

Pravin Balubhai Wagh

... Petitioner

Versus

Chhotubhai Babubhai Patel and others

... Respondents

Mr. M.Vashi, Senior Advocate alongwith Ms. Deokar instructed by M.P. Vashi Associates for the Petitioner.

Mr. Manoj M. Badgujar for Respondent No.1.

Mr. Santosh Kyadiguppi for Respondent No.3.

CORAM : S.J. KATHAWALLA, J.

DATED : 4th JANUARY, 2019

P.C.:

1. The above Arbitration Petition is filed by the Petitioner – Pravin Balubhai Wagh, Proprietor of Sukh Shanti Realtors against the Respondents – Chhotubhai Babubhai Patel and others, under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) seeking appointment of a sole Arbitrator to decide the disputes between the parties arising out of the Development Agreement dated 20th October, 2016.
2. Clause 34 of the said Development Agreement pertains to arbitration and is reproduced hereunder :-

“34. It is agreed by and between the party in case of death of either party these agreement will continue with both that parties and in that circumstances any dispute arise between the parties they shall save the business by putting

arbitrator name Dinesh Dave, Mr. Vaibhav Narkar and Sanjeev Kumar Agarwal firstly and then court of law.”

3. The Learned Advocate appearing for the Respondents has pointed out that in view of the above clause/Agreement, the parties can invoke arbitration only if dispute/s arise upon the death of one of the partners.
4. The Learned Senior Advocate appearing for the Petitioner has submitted that any dispute arising between the parties in respect of the said Agreement can be referred to arbitration.
5. I have perused the Development Agreement dated 20th October, 2016 executed between Chhotubhai Babubhai Patel and others, referred to as the landowners (which expression is deemed to mean and include their successors, administrators and assignees) and Shri. Pravin Balubhai Wagh, referred to as the developer (which expression is deemed to mean and include his heirs, executors, administrators and assignees).
6. Clause 34 of the Development Agreement dated 20th October, 2016 pertains to arbitration. The said clause makes it clear that upon the death of either party any dispute arises between the parties, the same shall be referred to the arbitrators named therein. It therefore follows that no dispute can be referred to arbitration save and except the disputes arising between the parties upon the death of one of the parties i.e. the dispute arising between the surviving partner and the

successor/administrator/assignee of the party, who has passed away.

7. In the instant case, admittedly both the parties are surviving and therefore no arbitrable dispute exists. The Petition is therefore dismissed.

8. The Learned Senior Advocate appearing for the Petitioner has submitted that in order to enable him to file a Suit and obtain urgent reliefs, the ad-interim relief earlier granted by this Court be continued for a period of two weeks from today. Ad-interim relief granted earlier shall therefore continue to be in force upto 19th January, 2019. The above Arbitration Petition along with Arbitration Petition No. 6 of 2018 filed under Section 9 of the Act, are therefore disposed off.

(S.J.KATHAWALLA,J.)