

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 32 OF 2012

Narendra Janardhan Pathak & Ors.	... Petitioners
V/s.	
Smt. Revaben Mulji Rathod & Ors.	... Respondents

Ms. Gauri Godse for the applicants.

CORAM : G.S.KULKARNI, J.
DATE : 29th August, 2019

P.C.:

Heard learned Counsel for the petitioners.

2. Respondent no. 1 has expired and legal representatives of respondent no. 1 are respondent nos. 2,3, 4 and 5. Respondent no. 2 has also expired. Civil Application No. 31 of 2019 was filed by the petitioners to bring on record the legal heirs of respondent no. 2, which is allowed by a separate order passed on the said Civil Application. In pursuance of the order dated 17th July, 2019, the added respondents were given sufficient notice of this Petition. Respondent nos. 3, 4 and 5 are also served, however, they are not represented. Accordingly, the Petition is taken up for hearing.

3. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the petitioners have approached this Court praying for appointment of an arbitral tribunal to

adjudicate the disputes and differences between the parties which have arisen under the Preliminary Agreement dated 21 February 2011. The arbitration agreement between the parties is contained in clause (12) which reads thus:-

“12. In case of any disputes, doubts, or differences arising between the parties hereto, in respect of the any of the terms and conditions of this agreement or in respect of interpretation, of any of the terms or conditions of this presents or in respect of any other matter, cause or thing whatsoever not contained herein otherwise provided for, the same shall be referred to adjudication to the Arbitration subject to the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modifications or re-enactment thereof for the time being in force.”

4. This petition which is of the year 2012 had remained pending as there was an issue in regard to the document not being sufficiently stamped. This Court in its judgment in Writ Petition No. 5760 of 2016 has decided the dispute on this issue and has held that the document in question is adequately stamped at Rs.100/-. Hence, there is no impediment for the Court to proceed to adjudicate this petition.

5. As noted above, the respondents have not appeared and thus there is no contest to the present petition. The averments as made in the Petition would be required to be taken as uncontroverted. In the circumstances, as there exist an arbitration agreement between the parties as also there is appropriate invocation of arbitration agreement, the Petition is required to be allowed. Hence, the following order:

ORDER

- (i) Mr. Justice P.D. Kode (Retd.) is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the Preliminary Agreement dated 21 February 2011;
- (ii) The learned prospective sole arbitrator, ten days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial-I), to be placed on record of this petition with a copy to be forwarded to both the parties;
- (iii) The parties have agreed that the venue of the arbitration shall be at Mumbai;
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties on merits of the disputes are expressly kept open;
- (vi) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;
- (vii) The petition is disposed of in the above terms. No costs.
- (viii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“204, 2nd Floor, Vardhaman Chambers,
Cawasjee Patel Street, Lane adjacent to Dwarka Hotel,
Fort, Mumbai – 400 001.
Mob.: 9969101100”.

(G.S.KULKARNI, J.)