

Vidya Amin

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

ARBITRATION PETITION NO. 125 OF 2018

Jaiprakash Sitaram Goel & Ors.	... Petitioners
V/s.	
Vilas Eknath Nandgude	... Respondent

**AND
ARBITRATION PETITION (ST.) NO. 25292 OF 2019**

Jaiprakash Sitaram Goel & Ors.	... Petitioners
V/s.	
Vilas Eknath Nandgude & Ors.	... Respondents

Mr. Mutahhar Khan i/b. Rajesh Gupta for the petitioners.
Ms. Vrushali Uday Kabare for the respondent no. 1.
Ms. Swati Jadhav for respondent nos. 2 to 4 in Arbitration Petition (St.) No. 25292 of 2019.

**CORAM : G.S.KULKARNI, J.
DATE : 16 October, 2019**

P.C.:

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. Arbitration Petition No.125 of 2018 is filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the petitioners have prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences, which are stated to have arisen between the parties under the Deed of Partnership dated 10 October 2005 read with Deed

of Supplementary Partnership dated 10 October 2005. The Arbitration Agreement between the parties is contained in Clause 26 of the Deed of Partnership, which reads thus:

“26. All disputes and differences whatsoever arising out of or touching these presents or the construction or application thereof or any clause or thing herein contained including the performance of the respective obligations of each of the parties hereto during the subsistence of this Agreement, shall be referred by the parties hereto for arbitration under the provisions of the Arbitration and Conciliation Act, 1996 and any decision made by such Arbitrator/s on the point of reference made to him/them shall be final and binding on the parties hereto.”

3. It clearly appears from the combined reading of these two documents that both these deeds are connected deeds and respective clauses in both these deeds are required to be read together, which will be clear from the plain reading of clause 25 of the principal agreement which reads thus:

“25. The parties hereto shall be entitled to modify any of the above terms by executing a supplementary deed and any such deed when executed shall have effect, unless otherwise provided, from the 1st day of the accounting period in which the supplementary deed is executed and the same shall form part of this Deed of Partnership.”

4. In the Deed of Supplementary Partnership, the parties have incorporated principal agreement by providing the following clause:

“WHEREAS the parties hereto are carrying on business in partnership under the name and style of “SHRI GANESH CONSTRUCTIONS” under a Deed of Partnership dated 10.10.2005 read with a Deed of Supplementary Partnership dated 10.10.2005 (both are hereinafter jointly referred to as “the said Deeds”

NOW THESE PRESENTS WITNESSETH and it is hereby agreed by and between the parties hereto as follows:

“1) These presents are intended to be supplemental to the said Deeds and shall be read and construed as such. To the extent, the terms hereof modify/alter/amend the terms of the said Deeds, the terms of the said Deeds

shall stand modified/altered/amended, as the case may be.”

5. It is also not in dispute that the petitioners by their advocate’s notice dated 11 March 2017 invoked the arbitration agreement as also set out the nature of the dispute and called upon the respondent to agree for appointment of arbitral tribunal for adjudication of the disputes. Paragraphs 10 and 11 of the said letter are clear in regard to the invocation of arbitration agreement. As there was no response, further letter dated 11 April 2018 came to be addressed on behalf of the petitioner. However, again this letter was not responded. Thereafter the petitioner has approached this Court by filing the present petition praying for appointment of arbitral tribunal.

6. Perusal of record indicates that this Court by order dated 6 December 2018 had directed the petitioner to serve the respondent through local police station. Now the respondent is represented by Advocate Vrushali Kabare. As the matter was adjourned on several occasion, this Court on 11 September 2019 has passed following order:

“1. At the request of learned counsel for the respondent, as a last chance, stand over to 25th September 2019. No further adjournment.

2. Reply affidavit, if any, be served on the learned counsel for the petitioner well in advance.”

7. It is on this backdrop that the proceedings are listed today. Reply affidavit is not filed. However, learned counsel for the respondent by opposing this Petition contended that in the Deed of Supplementary Agreement, there is no arbitration agreement between the parties and thus, the petition ought not to be entertained. When a query is made to the learned counsel for the respondent that as seen from the different clauses both the agreements are required to be read together, learned counsel for the respondent could not offer any comments.

8. As can be clearly seen, on the cumulative reading of both these agreements, they are required to be read together as all these clauses are interconnected. The opposition as urged on behalf of the respondent accordingly cannot be accepted.

9. There is connected petition, being Arbitration Petition (St.) No. 25292 of 2019 in which respondent nos. 2 to 4 have no objection for appointing an arbitral tribunal. The facts in this petition are quite similar with the above petition. Deed of Partnership in this case is dated 17 February 2006 as also Deed of Supplementary Partnership is of 17 February 2006. Respondent no. 1 is also common to both the proceedings. Learned counsel for the parties submit that this petition also can be disposed of by this common order.

Accordingly, the above observations would govern the disposal of this petition as well.

10. In the above circumstances, as there exists arbitration agreement between the parties and as also there is appropriate invocation of arbitration agreement and refusal on the part of respondent no.1 to appoint an arbitral tribunal, both these petitions will have to be allowed. Hence, following order:

ORDER

- (i) Dr. Justice Smt. Shalini Phansalkar Joshi, Former Judge of this Court is appointed as a prospective sole arbitrator to adjudicate the disputes between the parties which have arisen under the Deed of Partnership dated 10 October 2005 read with Deed of Supplementary Partnership dated 10 October 2005.
- (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 application with a copy to be forwarded to both the parties;
- (iii) The fees payable to the arbitral tribunal shall be as prescribed

under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

- (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 are expressly kept open;
- (vi) Office to forward a copy of this order to the learned Arbitrator on the following address:

Bungalow no. 12,
Bhagya Chintamani Society,
Opp. Kachra Depot, Paud Road,
Kothrud, Pune – 411 038.
(M) : 9657188676
E-mail: phansalkarjoshi@gmail.com

11. Both the Petitions are disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)