

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM.ARBITRATION PETITION (L) NO.43 of 2019

Prasad Arvind Chavan .. Petitioner

vs

Vinay Ramchandra Sawant & anr .. Respondents

with COMM.ARBITRATION APPLICATION (L) NO.12 of 2019

Prasad Arvind Chavan .. Petitioner

vs

Vinay Ramchandra Sawant & anr .. Respondents

Mr.Y.C.Naidu with Mr.J.N.Jain for Petitioner/Applicant
Ms.Prabha V.Badadare for Respondents.

Coram : G.S.KULKARNI, J

Date : 14th February, 2019

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1. Heard learned counsel for the applicant and learned counsel for the respondents.

2. There are two proceedings. Arbitration Application (L) No.12 of 2019 is filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). Arbitration Petition (L) No. 43 of 2019 is filed under section 9 of the Act, whereby the petitioner is seeking interim reliefs

pending the arbitral proceedings. Learned counsel for the parties agree that both the proceedings can be heard together and can be disposed of by this common order

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Comm.Arbitration Application (L) No.12 of 2019

3. This is an application under section 11 of the Act whereby the applicant has prayed for appointment of a sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties, under the Partnership Deed dated 22.3.2014 of M/s Crafters Realty. The Deed of Partnership in clause 27 contains an arbitration agreement between the parties which reads thus :

“Any dispute or question which may arise in the business of the said partnership in connection with any matters between parties of the surviving and partners and their successors or legal representative of the deceased partner whether during the currency of this agreement or after the determination thereof relating to arising out of the business of the partnership or of this partners shall unless decided by mutual agreement of the parties, be referred to arbitrators one each to be appointed by the parties to the dispute. Such arbitration shall be held at Mumbai and shall be governed by the provision of the Arbitration Act for the time being in force in the Indian Union, and its award shall be binding on the parties to the dispute.”

4. As disputes and differences had arisen between the applicant and other partners, the applicant by his Advocate's letter dated 27.9.2017

invoked the above arbitration agreement, and called upon the respondents to appoint an arbitrator to adjudicate the disputes between the parties. This notice of the applicant was responded by the advocate for the respondents by their letter dated 3.10.2017, whereby it was informed to the applicant that the respondents are desirous of an amicable settlement of the disputes. The case of the applicant is that the disputes could not be resolved although the applicant repeatedly approached the respondents, and in fact it was revealed that the respondents have formed a new partnership firm in the name of M/s Sapphire Blue Realty to undertake the development of a property which actually belonged to the partnership firm of M/s Crafters Realty in which the applicant was a partner. The applicant therefore instructed his advocate to address a letter dated 27.2.2018 to the respondents raising a concern over those developments which had come to the knowledge of the applicant, and again called upon the applicant to refer the disputes for adjudication of an arbitral tribunal, and also called upon the respondents not to any create third party rights in respect of the land in question. As there was no response from the respondents, the present application under section 11 of the Act has been filed.

5. After this application was heard for sometime, the learned counsel for the parties on instructions, would fairly submit that the respondents are agreeable for referring the disputes and differences for arbitration, by appointing a sole Arbitrator.

6. In view of the consensus between the parties, the following order :-

O R D E R

(i) Mr Justice V.M.Kanade (Retd) is appointed as a sole prospective Arbitrator to adjudicate the disputes and differences between the parties under the Partnership Deed dated 22.3.2014;

(ii) The learned prospective arbitrator 15 days prior to entering a reference shall make a disclosure as per section 11 (8) read with section 12 (1) and the same be forwarded to the Prothonotary and Senior Master, to be placed on the record of this application as also furnish the same to the parties;

(iii) The petition under section 9 of the Act be treated as an application under section 17 of the Act to be adjudicated by the learned sole Arbitrator.

(iv) All contentions of the parties on merits of the disputes are expressly kept open.

7. These proceedings are disposed of in the above terms. No costs.

8. Office to forward a copy of this order to Mr Justice V.M.Kanade (Retd).

{G.S.KULKARNI, J}