

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO.865 OF 2018

Intercon Construction (I) Pvt. Ltd.	...	Petitioner.
V/s.		
Varsha Prabhakar Kunte and 13 ors	...	Respondents

- Mr. Murari Madekar with Mr. Sachin Kudalkar i/by M/s Madekar & Co., for the Petitioner.
- Mr. S. R. Nargolkar, for respondent No.2.

CORAM : G. S. KULKARNI, J.

DATE : 18th MARCH, 2019.

P.C. :

- 1] Heard Mr. Madekar, learned counsel for the petitioner and Mr. Nargolkar, learned counsel for the respondent No.2.
- 2] The office remark indicates that other respondents are served, however, they are not represented. Accordingly the petition is taken up for hearing.
- 3] Mr. Nargolkar, learned counsel for respondent No.2, submits that respondent Nos. 3 and 4 have expired.
- 4] The petition, therefore, stands abated against respondent Nos. 3 and 4.
- 5] This petition is filed under section 14 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), whereby the petitioner is seeking appointment of arbitrator in substitution of sole arbitrator, who has expired.

5] The case of the petitioner is that under clause No.60 of the agreement dated 9th April, 2005, disputes and differences were to be referred to the sole arbitrator. By an order dated 14th September, 2011, passed by this Court (D. K.Deshmukh, J.), in Arbitration Application No.172 of 2011, learned sole Arbitrator Shri S.R. Shah was appointed. Statement of claim was filed on behalf of petitioner. Various meetings were held by the sole arbitrator. However, the learned sole arbitrator has expired on 20th June, 2016.

6] The petitioner then approached this Court by filing application under Section 11 of the Act in Commercial Arbitration Application No.12 of 2017, for appointment of sole arbitrator. However, by order dated 12th December, 2017, this Court permitted to withdraw the said application and file appropriate application. The petitioner, therefore, has filed present application.

7] I have heard learned counsel for the parties and having perused the averments made in the application, it is in the interest of justice that the application should be allowed. Hence, following order.

Order

i] Mr Jaideep Mitra, Advocate, is appointed as the prospective substitute Arbitrator to adjudicate the disputes and differences between the parties, arising under the agreement dated 9th April, 2007. It would be open to the prospective sole arbitrator to proceed in the arbitration from the stage at which the proceedings had arrived before the earlier arbitral Tribunal.

ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of these applications with a copy to be forwarded to both the parties;

iii) At the first instance, the parties shall appear before the prospective arbitrator within four weeks days from today at a date and time as may be fixed by the prospective arbitrator.

iv) The arbitral Tribunal shall endeavour to adjudicate application under Section 17 of the ACA as expeditiously as possible preferably within a period of two months from the date of entering into reference.

(v) All contentions of the parties on merits of the matter are expressly kept open.

(vi) The Arbitration petition is disposed of in the above terms. No costs.

8] Office to forward a copy of this order to the learned Arbitrator on the following address:

Laxmi Building, II nd floor,
Opera House , Mumbai 400 004.

Phone No.022 23853622

[G. S. KULKARNI, J]