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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.60 OF 2017**

Pravinchandra Jinabhai Patel	..Applicant
Vs.	
Bhupesh Bhagwandas Patel & Ors.	..Respondents

Mr.M.S. Bhandari i/b. Ms.Pranjali Bhandari for Applicant.
 Mr.Mahendra Ghelani i/b. M/s.Law Charter for Respondent Nos.1, 6 & 7, 8, 9 & 10.
 Mr.Salik Khan for Respondent Nos.2 to 4.

**CORAM : G.S. KULKARNI, J.
DATE : 15th JANUARY, 2019**

P.C.:

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, the “ACA”) whereby the applicant has prayed for appointment of an arbitral tribunal for adjudication of the disputes and differences which are stated to be arisen between the parties under the Deed of Partnership of M/s. Vikram Builders dated 21 January 1986. The arbitration agreement between the parties contained in Clause 22 of the said partnership deed which reads thus:-

“All disputes and question whatsoever during the subsistence of the partnership or in the course of winding up the same or after its dissolution arising between the parties hereto or between the heirs and legal representatives of any partners or partner and the surviving partners or partner or between the representative heirs and legal representatives of all the partners in any matter pertaining to or touching the partnership accounts or affairs or pertaining to the agreements or valuation of the partnership assets and/or liabilities and/or relating to the existence validity or meaning of this deed or the construction or application thereof or any

claims or thing herein contained or any account or valuation or division or assets debts or liabilities to be made hereunder or as to any act deed or omission or any partner of as to any other matter in any way relating to the partnership business or the affairs thereof or the rights duties or liabilities of any person hereunder shall be referred to sole arbitrator and to be appointed by such party to the dispute subject thereto the arbitration proceedings shall be conducted in accordance with the Arbitration Act, 1940 or any statutory modification or re-enactment thereof for the time being in force and the award of such arbitrator or arbitrators or the umpire as the case may be shall be final and binding upon the parties to the disputes.”

2. The applicant had earlier moved a petition under Section 9 of the ACA (Arbitration Petition No.502 of 2010). Initially by an order dated 19 April 2010, ad-interim reliefs came to be granted in the following terms:-

“6. Pending the hearing and final disposal of this Arbitration Petition the respondents, their servants and agents are restrained from creating third party right in regard to the properties situated at Exhibit G. If any of the partner is in possession of the property at Exhibit G, he shall not part with the possession of the said property.”

3. The said petition was finally disposed of by an order dated 22 February 2011 passed by this Court (S.C. Dharmadhikari, J.) whereby the Court confirmed the ad-interim reliefs leaving the parties to agitate the issues before the arbitral tribunal. It is on the above background that the parties in the intervening period, appeared to have also made an attempt to resolve the issues in mediation proceedings however, the mediation could not succeed. This can be clearly seen from the letter dated 16 August 2016 addressed on behalf of the respondent to the

Advocate for the applicant and the letters of the applicant's Advocate dated 14 September 2016 and 22 September 2016 setting out the background and requesting the applicant for appointment of an arbitrator to arbitrate the disputes and differences between the parties. The above letters were responded by the Advocates for the respondents. There are allegations and counter-allegations between the parties.

4. In the above background, this application under Section 11 of the ACA came to be filed praying for appointment of an arbitrator to adjudicate the disputes and differences between the parties.

5. After this petition was heard for some time, Mr.Ghelani fairly submits that there is no impediment for adjudication of the disputes by appointing an arbitral tribunal. The parties have accordingly agreed that this application can thus be disposed of. It needs to be noted that respondent Nos.1 to 7 are already served and are represented by their respective Advocates. Mr.Ghelani has also instructions to appear for respondent Nos.8, 9 and 10. The above application is therefore required to be disposed of by following order:-

ORDER

(i) Mr.Justice D.B. Bhosale (Former Chief Justice of Allahabad High Court) is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Partnership Deed dated 21

January 1986 of M/s.Vikram Builders.

(ii) The learned sole arbitrator, fifteen 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 Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) It would be open to the applicant to file a statement of claim and implement such necessary parties in accordance with the orders passed today in chamber summons No.30 of 2019.

(iv) Office to forward a copy of this order to the learned Arbitrator.

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

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

(vii) The parties at the first instance shall approach the learned arbitrator on 22 January 2019 at mutually convenient time.

It is the contention of the parties that the learned arbitrator shall adjudicate the disputes and differences as early as possible and within a period of 6 months. I am sure if such request is made by the learned arbitrator, it would be appropriately considered.

[G.S. KULKARNI, J.]