

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.219 OF 2019**

Baburao Devaji Patil	...	Applicant
versus		
Nandadeep Co-op. Hsg. Soc. Ltd.	...	Respondent

Mr. Hetal Patel, for Applicant.
None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 11st SEPTEMBER, 2019

P.C.:

1. The Applicant has filed the above Arbitration Application against the Respondent under Section 11 of the Arbitration and Conciliation Act, 1996, as amended by Arbitration and Conciliation (Amendment) Act, 2015 (the Act) for appointment of a sole arbitrator to resolve the disputes that have arisen between the parties under the Development Agreement dated 11th August, 2007.

2. Clause 44 of the Development Agreement dated 11th August, 2007 pertains to arbitration and is reproduced hereunder :

“44. All disputes and differences between the parties hereto in connection with carrying out of this Agreement, including the interpretation of any terms or conditions hereof either during the subsistence of this agreement or subsequent thereto, shall be referred to arbitration and which shall be governed by

the provisions of the Arbitration and Conciliation Act, 1996 or its statutory modifications shall have summary powers. The Arbitration shall always be held in Mumbai and the Courts of Mumbai shall alone have jurisdiction in the matter.”

3. Since disputes arose between the parties, the Applicant through its Advocate's letter dated 1st October, 2018 invoked the arbitration agreement. The Respondent through its Reply dated 25th October, 2018 contended that the development agreement is already terminated and therefore, the question of arbitration does not arise. The Applicant was therefore, constrained to file the above Arbitration Application seeking appointment of the sole arbitrator in the matter.

4. A copy of the above Arbitration Application is duly served on the Respondent and the affidavit proving service dated 22nd July, 2018 is filed on record. However, none appear for the Respondent. The Respondent has not agreed to the names proposed by the Applicant and has also not suggested the name of any other person to act as Arbitrator in the matter. The Respondent also failed to file Affidavit in Reply opposing the Application. It is therefore, clear that despite agreement, the Respondent has failed to appoint

an Arbitrator to resolve their disputes. Hence, the following order :

- (i) Mr. Rohan Rajadhyaksha, Advocate is appointed as the sole Arbitrator to decide the disputes between the parties arising out of the Development Agreement dated 11th August, 2007.
- (ii) The learned Arbitrator shall within a period of two weeks from today file his disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) with the Prothonotary and Senior Master of this Court.
- (iii) The venue of Arbitration shall be at Mumbai.
- (iv) The parties and/or their Advocates shall appear before the learned Arbitrator in his chambers, on 28th September, 2019 at 10.00 a.m. and obtain necessary directions.
- (v) The learned Arbitrator shall endeavour to pass his final Award within a period of six months from the date of this order.
- (vi) The learned Arbitrator shall not grant adjournments to the parties unless absolutely necessary.
- (vii) All contentions of the parties are kept open.
- (viii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(ix) The cost of arbitration shall initially be borne by the parties equally.

5. The above Arbitration Application is accordingly disposed of.

6. The Advocate for the Applicant shall forward a copy of this order to Mr. Rohan Rajadhyaksha, Advocate. He shall also serve a copy of this Order on the Respondent by hand delivery.

(S.J.KATHAWALLA, J.)