

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
in
COMMERCIAL DIVISION

ARB. APPLICATION NO.12 OF 2019

ALONG WITH
ARBITRATION PETITION NO.90 OF 2019

Arjun Atma Sippy and Anr. .. Applicants
Versus
Trilok P. Menghani HUF .. Respondents

Mr. Chetan Kapadia with Ranbir Singh and Rushil Mathur I/b. M/s. Mulla
& Mulla for petitioners
Mr. Anil D'Souza for respondent No.1 and 3 to 5
Mr. Sachin Rawool for respondent No.2.

CORAM : G.S.KULKARNI, J.

DATE : 6th February 2019.

P.C.

Arbitration Application No.12 of 2019

Heard Mr. Chetan Kapadia, learned Counsel for the
applicant/ petitioner and Mr. D'souza, learned Counsel for respondents on
this application filed under Section 11 of the Arbitration and Conciliation
Act, 1996 (for short ACA).

2] There is also a petition filed under section 9 of the ACA being Commercial Arbitration Petition No.90 of 2019. In this petition, Mr. Sachin Rawool learned Counsel appears for respondent No.2 and Mr. D'Souza appears for rest of the respondents.

3] On the petition under Section 9 of the ACA, on 24th January 2019, this Court observed as under:-

“ Learned Counsel for the respondent No.2, who is stated to be a Mediator states that his client is in possession of 11 agreements. Statement is accepted.

2. Learned Counsel for the petitioners to take instructions as to whether the petitioners would be agreeable for appointment of learned sole arbitrator to adjudicate the disputes and differences between the parties. Learned Counsel for the respondent Nos. 1, 3, 4 and 5 makes a statement that his clients are agreeable for referring the dispute to the learned sole arbitrator.

(emphasis added)

4] Today, learned Counsel for parties on instructions make a statement that their clients are agreeable for referring the disputes and differences between the parties as arising under the Partnership Deed dated 1st August 1985 for adjudication by a sole arbitrator. In view of this consensus, following order is passed:-

ORDER

(i) Mrs. Justice R.P. Sondurbaldota (Retd) is appointed as a sole arbitrator to arbitrate the disputes and differences between the

parties arising under the partnership deed dated 1st August 1985.

(ii) The learned prospective 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) Parties are directed to approach the learned Arbitrator at the first instance within ten days from today on any day as may be fixed by the prospective Arbitrator.

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

(v) This petition under section 11 of ACA is disposed of in the above terms. No costs.

(vi) Office to forward a copy of this order to the learned Arbitrator having her office address at:-

C/o. Suman Jain, 11/13 Botawala Building,
2nd floor, Office No.4A,
Opposite Asiatic Central Library,
Horniman Circle, Fort, Mumbai
(rekha_baldota@yahoo.com);

Arbitration Petition No.90 of 2019

5] The petitioners in this petition, filed under section 9 of the Arbitration and Conciliation Act, 1996 (for short ACA), prays for interim reliefs pending arbitral proceedings.

6] Mr. Kapadia, learned Counsel for the petitioners would submit that the concern of the petitioners at this stage would be in regard to prayer (a) of this petition which reads thus:-

(a) pending the hearing and final disposal of the Arbitration petition and culmination of the arbitration proceedings and till the Award is passed therein and until enforcement thereof, this Hon'ble Court be pleased to direct respondent No.1 and respondent No.2 to forthwith handover to the petitioner No.1 and petitioner No.2 the original agreements for sale executed by the petitioner No.1 and the Karta of respondent No.1 with respect to Flat Nos. 101, 102, 201, 202, 301, 302, 401, 402, 501, 502 and 602 in the building known as "Ashmita".

7] It is not in dispute that out of the total 14 agreements it is stated that 11 agreements are to the benefit of the petitioners and three agreements are to the benefit of the contesting respondents Nos. 1 and 3 to 5 stand deposited by the parties with respondent No.2, Samir Bhojwani, till the areas of disputes between the parties were resolved. These agreements are registered agreements.

Attention of this Court is also drawn to a letter dated 9th October 2017 addressed by the Advocates of the contesting respondents to the Advocates for the petitioners whereby it is stated that these agreements which are registered shall be kept with respondent No.2, Samir Bhojwani and would be released in favour of the purchasers once the concerned purchaser makes full payment of the entire purchase price/consideration of the respective flat. It was further recorded that since some purchasers had not made the entire payment till the date of the said letter, there was no question of releasing the concerned agreements for sale.

8] Mr. Kapadia learned Counsel for petitioner would submit that the entire payment qua these sale agreements, had now been made and, therefore, the agreements are required to be released by respondent No.2, who was considered to be an independent person in whom the parties had reposed faith.

9] On the other hand, Mr. D'Souza learned Counsel appearing for contesting respondents would submit that the letter which is referred by Mr. Kapadia dated 9th October 2017 was prior in

point of time to the date on which the agreements were deposited with Respondent No.2- Mr. Samir Bhojwani. He submits that in fact there are disputes qua these agreements and there is liability which may be incurred by the partnership firm, which both the disputing parties are required to clear, failing which it would not be in the interest of the parties that respondent No.2 releases these agreements. It is his submission that once the agreements are released, it would cause prejudice to both parties in adjudication of the disputes before the arbitral tribunal as for the past several years, accounts of the partnership are not finalised and today there is no clear picture as to the outstanding payments even qua these flats, which have come to the share of the respective parties. Mr.Kapadia disputes these submissions.

10] Be that as it may, now the arbitral tribunal is constituted by an order passed on the section 11, (Arbitration Petition No.12 of 2019) as filed by the petitioner. It appears that there are disputes between the parties. The agreements in question are entered by the partnership firm in favour of nominees of the respective partners. It may not be appropriate to consider and/or some manner form an

opinion on the alleged disputes between the parties, which would be subject matter of the adjudication either of any interim application and/or final adjudication in the arbitral proceedings. The only issue is in regard to the custody of the agreement with respondent No.2 which, it appears may not be acceptable situation as contended on behalf of the petitioners as the parties have already agreed for adjudication of the disputes before the learned Arbitrator. Admittedly, the respondent No.2 is third party with whom agreements are deposited and cannot be a party to the arbitration proceedings.

11] Considering this peculiar situation in my considered view, it would be in the interest of justice and also to the benefit of the parties that respondent No.2 is directed to deposit all the fourteen agreements in the presence of Advocates for both sides with Prothonotary & Senior Master on 14th February 2019 at 11.00 a.m. The Prothonotary & Senior Master after accepting these agreements shall keep all these agreements in a sealed cover in the safe custody of this Court. The release of the agreements shall be subject to the orders which would be passed by the arbitral tribunal. Ordered

accordingly.

12] Learned Counsel for the parties agree that in view of the above orders this petition under section 9 of ACA be treated as an application under section 17 of ACA to be decided by the arbitral tribunal. Mr. D'Souza learned Counsel for the contesting respondents submits that his clients would also file a reply to this application under section 17 of ACA. The respondents are permitted to file a reply and place the same before the arbitral tribunal.

13] This petition under section 9 of the Arbitration and Conciliation Act is disposed of in the above terms. However, all contentions of parties on merits are expressly kept open.

14] The Arbitral Tribunal shall consider deciding the section 17 application as expeditiously as possible and preferably within a period of eight weeks from today.

(G.S.KULKARNI, J).