

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPLICATION NO.7 OF 2018

RAHUL RAMKRISHNA MAKODE
VERSUS
CHIEF OFFICER, AURANGABAD HOUSING AND AREA
DEVELOPMENT BOARD, AURANGABAD AND ANR

...
Advocate for Applicant : Shri Patni Pramod F.
Advocate for Respondents 1 & 2 : Smt. Wadmare Sanghmitra

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 11, 2020

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PER COURT :-

1. On 28.11.2019, the following order was passed:-

“1. Despite service on the respondents through paper publication in Daily Pudhari, Aurangabad Edition, no appearance is entered, either in person or through an Advocate.

2. Clause 13.12 of the Contract dated 13.10.2015 enables the reference of the matter to the Chief Officer of the Board and thereafter, to the Vice-President and Chief Executive Officer of MHADA. However, in view of the amended provision under Section 12(5) introduced with effect from 23.10.2015, read with the VII Schedule, these authorities of MHADA would not be competent to initiate arbitration proceedings, for having interest in the dispute. I find that this case is covered by the judgment delivered by the Honourable Apex Court on 26.11.2019 in the matter of

Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd Arbitration Application No.32 of 2019.

3. *Considering the above, prima facie, I do not find that an independent arbitrator in the form of a retired Judge or any person as is suggested by the learned Advocate for the applicant, could be appointed, as Clause 13.12 does not provide for such appointment.*

4. *The learned Advocate for the petitioner submits that in the above backdrop, it has to be presumed that any person or retired Judge can be appointed as an independent arbitrator under the Arbitration and Conciliation Act, 1993.*

5. *In view of the above, list this petition on 18.12.2019, so as to enable the learned Advocate to research and convince the Court that in such a peculiar situation, any outsider or retired Judge can be appointed as an Arbitrator.”*

2. Considering that the date of the agreement is 30.10.2015, the year mentioned in paragraph No.4 of the above reproduced order should read as ‘2015’ instead of ‘1993’.

3. The learned Advocate for the respondents submits that there is no arbitration clause set out in the agreement and hence the applicant will have to approach the Civil Court.

4. The learned Advocate for the applicant submits that the applicant is willing to approach the Civil Court, provided, the time spent by the applicant in this Court from 15.6.2018, may be excused.

5. Considering the above, this application is disposed off. The applicant would be at liberty to approach the Civil Court on/or before 15.4.2020 and the time spent by the applicant in this Court from 15.6.2018 till 15.4.2020, shall be excused.

(RAVINDRA V. GHUGE, J.)

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