

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 11 OF 2017**

Sudama Associates Pvt Ltd through its Director
Sunil Patil

...Petitioner

Versus

Mahadev Nirman

...Respondent

Mr Sumit S Kothari, *for the Petitioner.*

Mr Sameer Pendse, *for the Respondent.*

CORAM: G.S. PATEL, J.

DATED: 10th January 2020

PC:-

1. Leave to amend in terms of draft tendered. It is taken on record and marked as “D1” for identification with today’s date. The amendment is also to the cause title. It is however clarified that the two individuals named are not joined separately as Respondents. They are merely the partners as per official records of the sole Respondent partnership firm. Learned Advocate for the Respondent clarifies that the authorized partner is Mr Mahesh Mohandas Lalchandani.

2. Amendment to be carried out without need of re-verification in the course of the week. Vakalatanama to be filed in the course of the week.
3. The Learned Arbitrator previously appointed by an order of 8th August 2014 expressed his inability to continue by his communication dated 13th June 2016 Exhibit 'C' at page 64. The present petition was filed after some delay on 25th January 2017. The delay, if any, is condoned.
4. There are in fact two Development Agreements. One is dated 11th August 2011 and the other is dated 21st May 2008. Disputes and differences have arisen between the parties in regard to both. The two agreements pertain to two separate lands although the contractual relationship between the parties may be the same in regard to both agreements. There will thus have to be two references to arbitration.
5. Parties agree on the name of the Hon'ble Mr Justice RG Ketkar, former Judge of this Court to decide the differences and disputes arising between the parties under the two development agreements, one dated 11th August 2011 the other dated 21st May 2008.
6. Hence the following order.

(a) Appointment of Arbitrator:

- (i) By consent, Mr Justice RG Ketkar (Retired), is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under (1) The Development Agreement dated 11th August 2001 and (2) The Development Agreement dated 21st May 2008.
- (ii) It is clarified that the disputes under each agreement is a separate reference to arbitration, and there are, therefore, two such references.
- (iii) Parties agree that pleadings may be common in the interest of economy and expedition. Both may also be heard together in the discretion of the learned Sole Arbitrator. However, each reference will receive a separate award.

(b) Communication to Arbitrator of this order:

- (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.
- (ii) In addition, within one week of this order being uploaded, the Registry will forward an

ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Mr Justice RG Ketkar (Retired)

Address Office No. 202, 2nd floor,
Dalamal Chambers,
Near Balwas Restaurant,
Behind Income Tax Building,
New Marine Lines,
Churchgate, Mumbai 400 020

Mobile 9821116740

Email rgketkar1@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates, to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (e) **Contact/communication information of the parties:**
Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.
- (f) **Interim Application/s:**
 - (i) Liberty to both sides to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.
 - (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six

months to complete the arbitration, should the learned Sole Arbitrator find it necessary.

(j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

7. It is clarified that the time for completion of the arbitration necessarily commences from the date when Mr Justice RG Ketkar enters upon the reference to his arbitration.

8. The Petition is disposed of accordingly. No costs.

(G. S. PATEL, J)