

Tauseef

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.163 OF 2019

Mr. Rahul Bhagwanrao Kadam & Ors.	...Petitioners
V/S.	
Mr. Anand Pandit & Anr.	...Respondents

Mr. Rohan Prakash Surve, Advocate for Petitioners.
None for Respondents.

CORAM : G.S. KULKARNI, J.
Date : 19th MARCH 2020.

P.C. :

1. Heard learned counsel for the petitioner. The Respondents although served are not appearing. There are two affidavits of service of Mr. Gopal Pawar dated 20 December 2019 and dated 17 March 2020. Accordingly, taken up for hearing.

2. This is a petition filed principally under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) for appointment of a substitute arbitrator, as the Sole Arbitrator Mr. Sharadchandra Shriniwas Banhatti, who was appointed by an Order dated 28 October 2010 passed by this Court, expired on 24 February 2018. The arbitral proceedings before the said sole arbitrator had substantially

progressed in as much as evidence of the petitioner and of Respondent No.1 was completed and the proceedings were fixed for recording of evidence of Respondent No.2.

3. Earlier this petition was listed before the Court on 12 March 2020 when the Court passed the following Order:-

- “1. Stand over to 19 March 2020 (HOB), to enable the respondents to appear before this Court, who are stated to be already served but not appearing. Affidavit of service is placed on record.*
- 2. A fresh notice be issued to the respondents by the advocate for the respondents and place on record an affidavit of service. If on the adjourned date of hearing, despite notice, the respondents do not appear, the court shall proceed to hear the petition and pass appropriate orders.*
- 3. Permission to serve by all permissible mode.”*

4. There is no opposition to the petition as placed on record, infact the Respondents, despite notice have chosen not to appear in the present proceedings. As the arbitral proceeding had commenced quite sometime time back, learned Counsel for the petitioner would be correct in contending that it is now necessary that the proceedings are taken further by appointing a substitute arbitrator. He submits that the termination of the arbitral proceedings on account of the death of the earlier arbitrator has caused a serious to the petitioner in pursuing the petitioners claim in the arbitral proceedings.

5. In the above circumstances, in my opinion, it is in the interest of justice that the petition is required to be allowed. Hence the following Order:-

ORDER

- (i). Mr. Justice Shrihari P. Davare, Former Judge of this Court is appointed as a Substitute Sole Arbitrator to adjudicate the disputes and differences between the parties under the Partnership Deed dated 05 December 2006 and 01 August 2007.
- (ii). The learned prospective 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 Registrar (Judicial) of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;
- (iii). The learned substitute Sole Arbitrator shall now proceed from the stage the earlier arbitral tribunal had reached in the arbitral proceedings. The petitioners are permitted to place on record of the substitute sole arbitrator all papers and proceedings of the arbitration which were before the earlier arbitral tribunal.
- (iv). The fees payable to the arbitral tribunal shall be governed by the provisions prescribed under the Bombay High Court (Fees

Payable to Arbitrators) Rules, 2018;

- (v). At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (vi). All contentions of the parties are expressly kept open;
- (vii). The petition is disposed of in the above terms. No costs.
- (viii). Parties to act on an authenticated copy of this order.
- (ix). Office to forward a copy of this order to the learned Arbitrator on the following address:
 - (a). Flat No.102, Shripad "A" Apartment, 59, Tulsibagwale Colony, Lane – 3, Sahakarnagar No.2, Pune – 411 009.
 - (b). Also at Mumbai:-
Flat No.501, Bldg. No.56A,
Chintamani Co.op. Housing Society,
Near Pratiksha Nagar Bus Depot,
Sion (E), Mumbai – 400 022.
Phone No. 022-24033735,
Mobile No.9923823838 / 9881120080.

(G.S. KULKARNI, J.)