

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1977 OF 2019

Tanzeem Shakil Ahmed Siddiqui	..	Petitioner
Age. 29 years, Occ. Household,		[original
R/o. Plot No.146, Motiwala Nagar,		plaintiff]
Near M.G.M. Hospital, Aurangabad.		

Versus

Mr.Shailesh Nemichand Kasliwal	..	Respondent
Age. 44 years, Occ. Business,		[original
R/o. R.H. No.15/16m "Nemi-Padma",		defendant]
Blue Bell, Hare Rama Hare Krishna		
Co-operative Housing Society,		
Plot No. RH-7, Near Prozone Mall,		
MIDC Chikalthana, Aurangabad-431006.		

WITH

WRIT PETITION NO. 1980 OF 2019

Nausheen Shakil Ahmed Siddiqui	..	Petitioner
Age. 29 years, Occ. Household,		[original
R/o. Plot No.146, Motiwala Nagar,		plaintiff]
Near M.G.M. Hospital,		
Aurangabad.		

Versus

1) Mr.Nemichand Kesharlal Kasliwal	..	Respondents
Age. 72 years, Occ. Business,		[original
R/o.R.H.No.15/16, "Nemi-Padma"		defendants]
Blue Bell, Hare Rama Hare Krishna		
Co-operative Housing Society,		
Plot No.RH-7, Near Prozone Mall,		
MIDC Chikalthana, Aurangabad-431 006.		

- 2) Mrs. Manjusha Shailesh Kasliwal
Age. 42 years, Occ. Business,
R/o. As above.

Mr.A.D. Kasliwal, Advocate for the petitioners.

Mr.P.F. Patni, Advocate for the respondents.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 10.03.2021
PRONOUNCED ON : 23.03.2021

J U D G M E N T :-

01. The petitioners/original plaintiffs assail the orders passed by the learned 8th Joint Civil Judge, Senior Division, Aurangabad dated 8th January, 2019, in Special Civil Suit Nos.286 of 2017 and 287 of 2017, whereby the parties to the suits were referred to arbitration by invoking the provisions contained in Section 8 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as "the Act, 1996" for short].

02. As an identical issue arises for consideration in both the petitions in the light of almost identical facts, these petitions are decided by this common judgment. The facts in Writ Petition No.1977 of 2019 are

noted as the facts in the lead petition.

03. The petitioner/plaintiff instituted Special Civil Suit No.286 of 2017 seeking possession of Row House No.16, admeasuring 112.04 sq.mtr. in Hare Rama Hare Krishna Co-operative Housing Society Ltd., Scheme "Blue Bells", situated at Chikalthana Industrial Area, Aurangabad [suit premises] on the premise that the defendant had assigned the suit premises by executing registered "agreement to assign/transfer" dated 14th March, 2016 for a valuable consideration of Rs.38,89,501/-. The plaintiff averred that under the terms of the said agreement, the defendant was under an obligation to put the plaintiff in vacant and peaceful possession of the suit premises. However, the defendant, failed to put the plaintiff in possession of the suit premises on one or other pretext. Since the defendant was not having alternate residential accommodation, when the suit agreement came to be executed, the plaintiff allowed the defendant to occupy the suit premises

temporarily. The defendant, taking undue advantage of the said gesture on the part of the plaintiff, refused to deliver possession of the suit premises, despite having received the entire consideration. Hence, the suit for possession.

04. The defendant appeared in response to the suit summons. The defendant preferred application [Exh.17] purported to be under sections 5 and 8 of the Act, 1996 and, inter alia, prayed that the parties be referred to arbitration in terms of clause 21 of the suit agreement.

05. The plaintiff resisted the prayer for referral to the arbitration on the ground that the cause of action and prayer in the suit are beyond the scope of arbitration clause, contained in the suit agreement. The dispute is not arbitrable.

06. The learned Civil Judge, after considering the rival submissions, was persuaded to allow the

application. The Court was of the view that all the pre-requisites for referring the parties to arbitration envisaged by section 8 of the Act, 1996 were made out, namely, there was an arbitration clause in the agreement; one party to the agreement had brought an action against the other; the subject matter of the action is the same as the subject matter of the said agreement and the defendant had moved the Court for referring the parties to arbitration before he submitted his first statement on the substance of the dispute.

07. Being aggrieved by the impugned order referring the parties to arbitration, the petitioners/plaintiffs have invoked the writ jurisdiction of this Court.

08. I have heard Mr.A.D. Kasliwal, learned Counsel for the petitioners, and Mr.P.F. Patni, learned Counsel for the respondents.

09. Mr. Kasliwal, learned Counsel for the

petitioners mounted a multi-fold challenge to the impugned order. Firstly, according to Mr. Kasliwal, the Trial Court clearly mis-directed itself in construing the nature of the agreement. The suit agreement is a concluded contract. The entire consideration was parted with by the plaintiff. The plaintiff was, in-fact, put in possession of the suit premises under the suit agreement. Thus, nothing remained to be performed under the terms of the suit agreement. What the plaintiff claims is the recovery of possession of the suit premises, which the plaintiff allowed the defendant to temporarily occupy gratuitously. The said dispute thus does not arise out of terms of the contract, between the parties, which contains the arbitration clause. Secondly, the Trial Court committed a manifest error in not advertng to the pertinent question of arbitrability of the dispute. In the circumstances of the case, according to Mr. Kasliwal, the question of entitlement to re-gain possession of the suit premises is not arbitrable. Thirdly, under the arbitration clause, the dispute was to

be referred to the society i.e. Hare Rama Hare Krishna Co-operative Housing Society Ltd. In view of the legislative change brought about by the Arbitration and Conciliation Amendment Act, 2015, the named arbitrator is ineligible to be appointed as an arbitrator. Thus, the reference of the dispute to arbitration in terms of the arbitration clause contained in the suit agreement, is legally unsustainable.

10. In opposition to this, learned Counsel for the respondent stoutly submitted that the suit agreement still retains the character of an executory contract. It is merely an "agreement to assign/transfer". By no stretch of imagination, it can be said to be a concluded contract. In any event, according to learned Counsel for the respondents, the aspect of delivery or non-delivery of possession squarely falls within the scope of arbitration clause as it, inter alia, provides for reference of any dispute or difference in connection with "occupancy" of the suit premises. The learned Civil

Judge, according to learned Counsel for the respondents, did not commit any error in referring the parties to arbitration. Thus, no interference is warranted in exercise of extra-ordinary writ jurisdiction, especially when the parties have been referred to arbitration in terms of arbitration clause in the agreement, the execution of which is indisputable, urged the learned Counsel for the respondents.

11. To start with, uncontroverted facts. There is not much controversy over the fact that the agreement to "assign/transfer" came to be executed between the parties on 14th March, 2016. Indisputably, the suit premises was agreed to be conveyed thereunder for the consideration of Rs.38,89,501/-. Indeed, there is a covenant to the effect that the vendor/defendant has put the purchaser/plaintiff in actual possession of the suit premises on the date of execution of said deed. Indisputably, the suit agreement contains an arbitration clause.

12. It may be apposite to extract clause 21, which provides for the mechanism of dispute resolution through arbitration;

"21. In the event of any dispute or difference arising out of or concerning the subject matter of these present or any covenant, clause or thing therein contained or otherwise arising out of the tenancy/development/occupancy, between any two or all the parties hereto, the same shall be referred to The Society and the decision of the Society shall be conclusive and binding on the parties hereto."

13. The learned Counsel for the petitioners would urge that in the backdrop of a clear and explicit covenant to the effect that the plaintiffs were put in possession of the suit premises on the date of execution of the suit agreement, the claim of the plaintiff that the defendant is not sued to recover the possession of the suit premises under the terms of the contract gains credence. Thus, the claim of the plaintiff and the relief sought are beyond the purview of the aforesaid arbitration clause.

14. I am afraid to accede to the aforesaid submissions. From a meaningful reading of the plaint, as

a whole, it becomes evident that the plaintiff claims that the plaintiff was not put in possession of the suit premises, despite having parted with the entire consideration. The Trial Court, after adverting to the correspondence, notices and complaint, which predate the institution of the suit, recorded a justifiable finding that the suit for possession necessarily emanates from the terms of the contract. The claim of the plaintiff that, after having been put in possession of the suit premises, the plaintiff had allowed the defendant to gratuitously occupy the suit premises and the defendant refused to deliver back the possession of the suit premises is not borne out by the averments in the plaint and the documents relied upon by the plaintiff in support of the claim.

15. The situation which thus obtains is that the foundation of the claim of the plaintiff for possession of the suit premises nests in the suit agreement. Clause 21, extracted above, thereof provides a mechanism of

dispute resolution through arbitration. In this backdrop, the applicability of the provisions contained in Section 8 of the Act, 1996, which mandates referral of the dispute to the arbitration, warrants consideration.

16. From the text of the provisions contained in Section 8(1) of the Act, 1996, following requisites are deducible.

(i) Subsisting arbitration agreement between the parties.

(ii) One of the parties to such an agreement brings an action against another before a judicial authority.

(iii) The dispute which is the subject matter of the suit falls within the scope of arbitration agreement.

(iv) The other party has applied for referral of the dispute to arbitration before submitting his first statement on the substance of the dispute.

(v) The dispute is arbitrable one.

17. Mr.Kasliwal, learned Counsel for the petitioners

did not endeavour to seriously dispute that the first four conditions, extracted above, are fulfilled in the facts of the case at hand. Mr.Kasliwal, however, urged with a degree of vehemence that the dispute is not arbitrable and the relief sought in the plaint is not one which can be entertained by the arbitrator. As a second limb of this submission, it was urged that the Trial Court committed a grave error in not addressing itself to the most pertinent question of arbitrability of the dispute. Mere existence of an arbitration agreement, according to Mr.Kasliwal, is not the be all and end all of the matter. It was incumbent upon the Trial Court to examine the arbitrability of the dispute.

18. To lend support to the aforesaid submissions Mr. Kasliwal placed a very strong reliance on the judgment of this Court in the case of Sharad s/o. Rajnikant Kathrani & Ors. Vs. Hemantkumar s/o. Narshibhai Parmar, 2018(3) ALL MR 879. Reliance was also placed on the judgment of the Supreme Court in the case of Booz Allen and Hamilton

Inc. Vs. SBI Home Finance Ltd. & Ors., 2011(7) ALL MR 786(S.C.).

19. In the case of Booz Allen (Supra), the Supreme Court culled out the essential conditions, which must be fulfilled before the parties can be referred to arbitration, in the following words:-

"12. xxxxxxxx Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under section 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide (i) whether there is an arbitration agreement among the parties; (ii) whether all parties to the suit are parties to the arbitration agreement; (iii) whether the disputes which are the subject matter of the suit fall within the scope of arbitration agreement; (iv) whether the defendant had applied under section 8 of the Act before submitting his first statement on the substance of the dispute; and (v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration."

[emphasis supplied]

20. Clause (v) emphasised above envisages the element of arbitrability of the dispute. In this context, the Supreme Court went on to expound the legal position as under :-

"20. xxxxxxxxxx But where the issue of 'arbitrability' arises in the context of an application under section 8 of the Act in a pending suit, all aspects of arbitrability have to be decided by the court seized of the suit, and cannot be left to the decision of the Arbitrator. Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court

where the civil suit is pending, will refuse an application under section 8 of the Act, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal.

21. xxxxxxxxxx

22. Arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognized examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

23. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, judgment in personam refers to a

judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide : Black's Law Dictionary). Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable.

24. The Act does not specifically exclude any category of disputes as being not arbitrable. Sections 34(2)(b) and 48(2) of the Act however make it clear that an arbitral award will be set aside if the court finds that "the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force."

[emphasis supplied]

21. In the light of aforesaid enunciation of the legal position, in the case of Sharad (Supra), a learned Single Judge of this Court held that, in the facts of the said case, where the petitioner/plaintiff had sought declaration that the respondent/defendant had made excess construction than permissible under law and that the defendant has no right to transfer the excess construction so made, the dispute was not arbitrable. Placing reliance on the pronouncement in the case of Booz Allen (Supra), it was, inter alia, observed that in the facts of the said case, it becomes clear that the nature

of the relief sought in the suit being a declaration with regard to rights in the immovable properties, those rights were, rights in rem and, therefore, the dispute was not arbitrable.

22. Before advertent to deal with the challenge to the impugned order on the ground of "non-arbitrability" as alleged by the petitioners, in the backdrop of the aforesaid enunciation, it may be apposite to keep in view the approach which is expected of a Civil Court, when the provisions contained in Section 8 of the Act 1996 are invoked. Posing an incorrect question has the propensity to lead astray. The correct approach is to find out whether the jurisdiction is excluded. And not to find out whether jurisdiction exists.

23. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of Sundaram Finance Limited and Anr. Vs. T. Thankam, (2015) 14 SCC 444, wherein, delineating the approach which ought

to be adopted, once a party invokes Section 8 of the Act, 1996 and requisite conditions are adequately satisfied, the Supreme Court observed as under :-

"13. Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law - generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court."

[emphasis supplied]

24. On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether the dispute is "arbitrable". Generally, there is an obligation on the part of the vendor to put the purchaser in such possession as the property admits. In the case at hand, there is material to indicate that though the suit agreement records that the plaintiff was put in possession of the suit premises under the terms of the said agreement, yet, in-fact, the plaintiff has not been

put in possession of the suit premises. The right to seek possession of the premises thus flows from the transaction of sale. A part of the contract, in a sense, has not been performed. The prayer in the suit thus partakes the character of a suit for specific performance of the contract to deliver possession of the suit premises.

25. A useful reference, in the aforesaid context, can be made to a judgment of the Supreme Court in the case of Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Ors., (1999) 5 SCC 651, wherein the following question, inter alia, arose for consideration.

"Whether an arbitrator is not entitled to pass an award directing specific performance of contract for sale and the subject matter of the dispute is not capable of arbitration under section 34(2)(b)(i) of the Act, 1996?"

26. The Supreme Court answered the aforesaid question in the affirmative, after adverting to the cleavage of opinion which then existed in the view of different High Courts, as under :-

"31. This point becomes relevant because if the arbitrators

cannot grant specific performance, a point can be raised under Section 34(2)(b)(i) that the subject matter of the dispute is not capable of arbitration.

32. One of the points raised in the grounds in this Court is that the grant of specific performance is discretionary and the discretion to grant or not to grant specific performance has been conferred by the Specific Relief Act, 1963 on the Civil Court and hence the arbitrator cannot be deemed to have been empowered to grant such a relief.

33. We may point out that the Punjab High Court in Laxmi Narayan vs. Raghubir Singh [AIR 1956 Punjab 249] the Bombay High Court in Fertiliser Corporation of India vs. Chemical Construction Corporation [ILR 1974 Bombay 856/858 (DB)] and the Calcutta High Court in Keventer Agro Ltd. vs. Seegram Comp. Ltd. [Apo 498 of 1997 & Apo 449 of (401)] (dated 27.1.98) have taken the view that an arbitrator can grant specific performance of a contract relating to immovable property under an award. No doubt, the Delhi High Court in M/s PNB Finance Limited Vs. Shital Prasad Jain & Others [AIR 1991 Del. 13] has however held that the arbitrator cannot grant specific performance. The question arises as to which view is correct.

34. In our opinion, the view taken by the Punjab, Bombay and Calcutta High Courts is the correct one and the view taken by the Delhi High Court is not correct. We are of the view that the right to specific performance of an agreement of sale deals with contractual rights and it is certainly open to the parties to agree - with a view to shorten litigation in regular courts - to refer the issues relating to specific performance to arbitration. There is no prohibition in the Specific Relief Act, 1963 that issues relating to specific performance of contract relating to immovable property cannot be referred to arbitration. Nor is there such a prohibition contained in the Arbitration and Conciliation Act, 1996 as contrasted with Section 15 of the English Arbitration Act, 1950 or section 48(5)(b) of the English Arbitration Act, 1996 which contained a prohibition relating to specific performance of contracts concerning immovable property.

35. It is stated in Halsburys' Laws of England 4th Ed., (Arbitration Vol.2 para 503) as follows:

"Nature of the dispute or difference: The dispute or difference which the parties to an arbitration agreement agree to refer must consist of a justiciable issue triable civilly. A fair test of this is whether the differences can be compromised lawfully by way of accord and satisfaction (Cf. Bacon's Abidgement and Award A)."

Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal

agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, (say) physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (Keir vs. Leeman) (1846) 9 Q.B. 371. Similarly, it has been held that a husband and wife may, refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (Soilleux vs. Herbst) (1801) 2 Bos & p. 444; Wilson Vs. Wilson (1848) 1 HL Cas 538; (Cahill vs. Cahill) (1883) 8 App Cas 420(HL).

36. Further, as pointed in the Calcutta case, merely because there is need for exercise of discretion in case of specific performance, it cannot be said that only the civil court can exercise such a discretion. In the above case, Ms.Ruma Pal,J. observed:

".....merely because the sections of the Specific Relief Act confer discretion on courts to grant specific performance of a contract does not mean that parties cannot agree that the discretion will be exercised by a forum of their choice. If the converse were true, then whenever a relief is dependent upon the exercise of discretion of a court by statute e.g. the grant of interest or costs, parties should be precluded from referring the dispute to arbitration."

We agree with this reasoning. We hold on Point 3 that disputes relating to specific performance of a contract can be referred to arbitration and Section 34(2)(b)(i) is not attracted. We overrule the view of the Delhi High Court. Point 3 is decided in favour of respondents."

27. In-fact, in the judgment of Booz Allen (Supra) on which a very strong reliance was placed on behalf of the petitioners, the Supreme Court has explained the distinction between right in rem and right in personam, in the context of a suit for specific performance of an agreement and a mortgage suit. It was held that an

agreement to sell or an agreement to mortgage does not involve any transfer or right in rem. It creates only a personal obligation. Therefore, if specific performance is sought either in regard to an agreement to sell or an agreement to mortgage, the claim for specific performance will be arbitrable. On the other hand, a mortgage is a transfer of a right in rem. A mortgage suit for sale of mortgaged property is an action in rem, for enforcement of a right in rem. A suit on mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by the Courts of law and not by the arbitral tribunal.

28. In the backdrop of the aforesaid exposition of legal position, the claim of the petitioners that in the instant case the reliefs are not amenable to arbitration does not merit countenance.

29. The matter can be looked at from a slightly

different perspective. In a line of decisions, it is held that ordinarily every civil or commercial dispute, whether rooted in contract or otherwise, which is capable of being adjudicated by the Civil Court, is capable of being resolved by arbitration, unless the jurisdiction of the arbitral tribunal is excluded expressly or by necessary implication. Thus, barring well recognized examples of non-arbitral disputes, which are essentially in the nature of actions in rem, the Courts would be loathe to expand the categories of non-arbitral disputes lest the arbitration as a forum of choice of the parties for resolution of dispute is denuded of authority and efficacy.

30. The conspectus of aforesaid consideration is that a suit for recovery of possession of the suit premises on the basis of a contract for sale squarely falls within the scope of arbitration, subject to dispute being governed by the arbitration agreement. Reliance placed by Mr.Kasliwal on the pronouncement of the Supreme

Court in the case of Booz Allen (Supra) and this Court in the case of Sharad (Supra) does not advance the cause of the petitioners. Thus, to the extent the learned Civil Judge entered the finding that the parties are required to be referred to arbitration, no fault can be found with the impugned order.

31. However, the matter does not rest at that. Under the arbitration clause, extracted above, the dispute was to be referred to 'the Society'. From the recitals in the suit agreement, it becomes evident that the impartiality of 'the Society' cannot be vouched for. In view of the provisions contained in Section 12(5) of the Act, 1996, the reference of the parties to the arbitration by the Society is legally unsustainable. To this extent, the grievance of Mr. Kasliwal is well merited. It seems that the learned Civil Judge did not advert to this aspect of the matter adequately. Therefore, the impugned order deserves to be modified.

32. At this stage, learned Counsel for the parties seek time to suggest the name of the Arbitrator.

33. Heard learned Counsels for the parties. Certain names were suggested across the Bar. In the prevailing circumstances, it may be appropriate to appoint an Arbitrator, who is based at Aurangabad.

34. Mr. Patni, learned Counsel for the respondents submits that Mr. Justice P.R. Bora [Retd.] has verbally consented for being appointed as an Arbitrator.

35. In the aforesaid view of the matter, Mr. Justice P.R. Bora is appointed as an Arbitrator, subject to formal consent in writing and making a disclosure as envisaged by Section 12 of Act, 1996.

36. Hence, following order :-

The petition stands partly allowed.

The order referring the parties to arbitration

stands confirmed.

However, the order of referral to arbitration by the named arbitrator i.e. the Society, stands set aside.

Mr. Justice P.R. Bora is appointed as an Arbitrator.

Learned Arbitrator is requested to submit consent in writing for being appointed as an Arbitrator and also make a disclosure in terms of section 12 of the Act, 1996, within a period of two weeks.

The parties shall appear before the learned Arbitrator on 15.04.2021.

The Registry to communicate this order to Mr. Justice P.R. Bora.

No costs.

Rule made absolute in aforesaid terms.

All concerned to act on authenticated copy of this judgment.

[N . J . JAMADAR , J .]