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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.100 OF 2021

Patidar Co-operative Housing Society Ltd. ...Petitioner

Versus

M/s. Retro Realtors & Ors. ...Respondents

Mr. Chandrakant Chavan for the Petitioner.

Mr. Ram Upadhyay i/b. Law Competere Consultus for the
Respondents.

CORAM : R.I. CHAGLA J

DATE : 29TH NOVEMBER 2021

ORDER :

1. Heard learned Counsel for parties.

2. By this Arbitration Petition the Petitioner is seeking appointment of a Sole Arbitrator as per Section 11 of Arbitration and Conciliation Act, 1996 as amended in 2015. The arbitration clause is in clause 35 of the agreement for development of property dated 27th February, 2009. The notice invoking arbitration is dated 18th June, 2019. There is no reply to the notice invoking arbitration.

3. There is an Affidavit in Reply dated 27th November, 2021 which has been tendered by the learned Counsel appearing for Respondent Nos.2 and 3. In the Affidavit in Reply an award passed by learned Arbitrator in another proceedings concerning the partners of the Respondents has been referred to and by which award dated 17th August, 2021, the Sole Arbitrator has dissolved the Respondent firm. The award dated 17th August, 2021 is an *ex parte* award as none appeared for the Respondents therein. The learned Counsel for the Respondent Nos.2 and 3 has relied upon the award dated 17th August, 2021 to contend that the Respondent firm is dissolved and as the Respondent firm is non existent in view of the award having been passed, Section 19 of the Partnership Act, will come into play and the arbitrator has no jurisdiction to pass any award in respect of entertaining the claim of the Petitioner and pass any award against the dissolve firm.

4. Having considered the submissions, it is clear from the agreement for development of the property dated 27th February, 2009 that there is an arbitration clause between the Petitioner and Respondent viz. clause 35 of the said Agreement. The parties have agreed that if a Sole Arbitrator is

appointed all contentions of the parties including the contentions regarding jurisdiction and limitation be kept open.

Hence the following order:-

(i) By consent of parties Mr. A.S. Aguiar (Retired High Court Judge) to act as Sole Arbitrator to commence the arbitration proceedings under the agreement dated 27th February, 2009.

(ii) The venue of arbitration shall be in Navi Mumbai of the said Agreement dated 27th February, 2009.

(iii) Office to inform the Sole Arbitrator regarding her appointment.

(iv) The Sole Arbitrator is requested to file her Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.

(v) Parties to appear before the Sole Arbitrator on the date fixed.

(vi) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.

(vii) Arbitration is disposed of in the above terms.

(viii) No costs.

[R.I. CHAGLA J.]