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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 63 OF 2021**

Sailendra Kumar Behera & Anr	...Petitioners
<i>Versus</i>	
Rabindra Kumar Behera & Ors	...Respondents

Mr Jehangir Jejeebhoy, *with Ashir Amin and Samridhi Lodha, i/b Kanga & Co, the Petitioners.*
Mr Nikhil Karnawat, *i/b Pratik Amin, for Respondents Nos. 1 and 2.*
Dr Birendra Saraf, Senior Advocate, *with Dipti Das, Sunil A Vyas, Shruti Dasondi, i/b Fox Mandal & Associates, for Respondent No.3.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 14th July 2021

PC:-

1. Heard through video conferencing.

2. Between the two Petitioners and Respondents Nos. 1 and 2, there was a Family Settlement Agreement dated 8th April 2018. Disputes arose. Those parties are in arbitration before a sole Arbitrator, Hon'ble Mrs Justice Rekha Sondur-Baldota, former Judge of this Court.

3. The Family Settlement Agreement also had an associated Escrow Agreement dated 8th May 2018. This was between the parties to the Family Settlement Agreement and the 3rd Respondent, Pradeep Kumar Naredi, the escrow agent.

4. The present Petition seeks an order under Section 11 of the Arbitration and Conciliation Act, 1996 for a reference, preferably to the sole arbitration of Mrs Justice Rekha Sondur-Baldota, she already being ceased of the principal dispute, of disputes under the Escrow Agreement dated 8th May 2018. Clause 10.2 has the provision for dispute resolution. Clause 10.2.3 specifically requires the escrow agent to be made a party to the arbitral proceedings, but Clause 10.2.4 says that he is not to incur costs in arbitration. Should he be required to appoint any legal adviser to represent him before the arbitral tribunal, the family members are to make available to him the required liquidity and funds within five days of the escrow agent submitting a requisition.

5. Mr Jejeebhoy for the Petitioners attempts a faint-hearted protest when Dr Saraf for the 3rd Respondent says this should be read to include any costs of the Section 11 Petition too. Realizing that persisting in this opposition will entail replies, rejoinders (and possibly more) and a judgment on merits, Mr Jejeebhoy wisely withdraws his objection.

6. There is already a demand made by the 3rd Respondent for advances. Mr Jejeebhoy has instructions to state that demand will be met by the Petitioners in the first instance, subject to their right of the recovery in arbitration from Respondents Nos. 1 and 2.

Similarly, the Petitioners will initially pay to the 3rd Respondent the costs of the Section 11 Petition, subject to their right to recover the whole or any part of it from Respondents Nos. 1 and 2 in arbitration. Accordingly, I accept the suggestion of the parties that the disputes under the Escrow Agreement dated 8th May 2018 also be referred to the sole arbitration of Hon'ble Mrs Justice Rekha Sondur-Baldota. The clause will operate in this manner in all future proceedings, i.e., reserving to the Petitioners the liberty to recover jointly and severally from Respondents Nos. 1 and 2 the whole or any part of the amount the Petitioner may have initially provided to the 3rd Respondent to meet his legal expenses.

7. I clarify that I have not appointed Hon'ble Mrs Justice Rekha Sondur-Baldota as an Arbitrator under this order but only accepted the parties' agreement on her nomination as such.

8. Necessarily, this means that the various terms and conditions including as to arbitral fees, will be in the discretion of learned sole Arbitrator. For good order, the learned sole Arbitrator is requested to file her statement of disclosure in accordance with the requirements of the statute.

9. The Arbitration Petition is disposed of in these terms.

10. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)