

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 472 OF 2020**

Ramesh N Thakkar

...Petitioner

Versus

Manilal Commodities Pvt Ltd

...Respondent

**Mr Vivek Kantawala, with Mr Amey Patil, Mr Shanay Bafna and
Hetal Jobanputra, i/b M/s Vivek Kantawala & Co, for the
Petitioner.**

Mr US Jain, for the Respondent.

ARUN
RAMCHANDRA
SANKPAL

Digitally signed
by ARUN
RAMCHANDRA
SANKPAL
Date: 2021.02.08
10:58:20 +0530

**CORAM: G.S. PATEL, J
DATED: 5th February 2021**

PC:-

1. Between the parties there was a Memorandum of Understanding (“MoU”) dated 11th November 2010. A copy of this is at page 24. There is no doubt that it contains an arbitration provision in Clause 12.3.2. The venue of the arbitration is Mumbai. The reference is to be a sole arbitrator.

2. The MoU relates to the development of Plot No. 42 in Sewri-Wadala area. The property is fully described at page 23. There is a structure standing on this plot of ground and three upper floors. The plot is about 726 square yards.

3. The Petition recites, and this is not disputed, that the Petitioner paid an amount of Rs. 3 crores to the Respondent on execution of the MoU, or pursuant thereto. The case now is that the Respondent has terminated the MoU, and may transact or otherwise deal with the property, thus defeating the Petitioner's rights.

4. On instructions from the Respondent, Mr Jain states that the amount of Rs. 3 crores can be brought in Court in a reasonable time. That statement is noted and accepted. He seeks four weeks' time in which to make this deposit. That is also reasonable. The deposit of Rs. 3 crores by the Respondent is to be made on or before 12th March 2021. On deposit, the Prothonotary and Senior Master will invest the amount in accordance with the usual practices of his office and retain the same until further orders of the Arbitral Tribunal or the Court, as the case may be.

5. Until the deposit is made, there will be an injunction restraining the Respondents from alienating, encumbering, or creating any third party rights or parting with possession of the property described in Exhibit "A".

6. If the deposit is not made by that date, this order of injunction will continue and the Petitioner will be entitled to apply for further reliefs, including appointment of a Receiver.

7. If the deposit is made, the order of injunction will cease to operate from the date of the deposit, provided the deposit is made on or before 12th March 2021.

8. A similar previous matter was referred to the sole arbitration of Mr Vishal Kanade, learned Advocate of this Court. Parties agree

that subject to the above, and this order continuing until the disposal of the present Section 9 Petition as a Section 17 Application, or until an order of the Arbitral Tribunal, whichever is earlier, the disputes and differences arising from the MoU dated 11th November 2010 are referred to the sole arbitration of Mr Vishal Kanade, learned Advocate of this Court.

TERMS OF APPOINTMENT

- (a) Appointment of Arbitrator:** By consent Mr Vishal Kanade, learned Advocate of this Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the Memorandum of Understanding dated 11th November 2010.
- (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 Petitioner within one week from the date this order is uploaded.
 - (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr Vishal Kanade, Advocate**

Address 103 Gundecha Chambers
Nagindas Master Road
(Opposite Theobroma)
Mumbai 400 001

Mobile +91 98196 68711

Email kanade.vishal@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8), read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioner will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (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. The information is to include functional email addresses and mobile numbers.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of

Section 16 of the Arbitration Act. All contentions are left open.

(g) Interim Application/s:

- (i) Liberty to the parties 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. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 Petition will be treated as affidavits filed in the Section 17 Application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.

(h) Fees: The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

(i) 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.

- (j) **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.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
- (l) **Procedure:** These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

9. The Commercial Arbitration Petition is disposed of in these terms. The Petitioners are at liberty to seek the costs of this Petition in arbitration, along with interest on costs if permissible in law.

10. At the request of Mr Jain, there will now be a chanting of the usual mantra: All contentions are expressly kept open. I have expressed no opinion on the merits of the matter. This deposit is without prejudice to the rival rights and contentions.

11. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)