

LAXMI
SUBHASH
SONTAKKE

Digitally signed by
LAXMI SUBHASH
SONTAKKE
Date: 2021.10.13
14:26:30 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 321 OF 2021

M/s. Vraj Kamman Developers LLP

.. Petitioner

Vs.

Bobby Shopping Centre Premises Co-operative
Society Ltd.

.. Respondent

Ms Aparna Deokar i/b M. P. Vashi & Associates for the Petitioner.
Mr. Paresh More for the Respondent.

CORAM :- B.P.COLABAWALLA, J.

DATE :- 8th OCTOBER, 2021.

P. C.:

1. The above Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short **“the Arbitration Act”**) seeking the following reliefs:

“a. That the respondent society be restrained by an order and an injunction of this Hon’ble Court from entering into MOU/development agreement or any other arrangement with any third party for redevelopment of the society property.

b. That the respondent be ordered and directed to execute an approved development agreement exchanged by the petitioner with the respondent (Exhibit-E1) so that further steps of registration of development agreement, getting IOD etc., can be initiated.”

2. After arguing for some time, both parties have agreed that the Arbitral Tribunal can be constituted and the above Section 9 Petition can be converted into a Section 17 Application to be heard and decided by the Arbitral Tribunal.

3. Both parties have further agreed that Mr. Rohan Kelkar, an Advocate of this Court, be appointed as the Sole Arbitrator to decide the disputes and differences between the Petitioner and the Respondent arising out of the Memorandum Of Understanding (for short “MOU”) dated 25th February, 2016. The Arbitration Agreement between the parties can be found at clause 29.1 of the said MOU which reads thus:

“29.1 All disputes and differences between the Society and the Developer hereto in connection with this Agreement, including the interpretation of any term or condition hereof either during the subsistence of this Agreement or subsequent thereto, shall be referred to arbitration of three arbitrators, one to be appointed by the Society and one to be appointed by the Developer and the arbitrators so appointed shall appoint a third arbitrator who shall act as the presiding arbitrator. The arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996 or its statutory modifications for the time being in force. The arbitration proceedings shall be held in Mumbai.”

4. Both parties have agreed before me that neither the party is disputing the existence and the validity of the Arbitration Agreement.

5. In view of the aforesaid stand taken by the parties, the following order is passed:

- a) By consent, Mr. Rohan Kelkar, an Advocate of this Court, is hereby appointed to act as the Sole Arbitrator to decide the disputes and differences between the Petitioner and the Respondent arising out of and/or in connection with and/or in relation to the MOU dated 25th February, 2016.
- b) A copy of this order will be communicated to the learned Sole Arbitrator by the advocates appearing on behalf of the Petitioner within a period of one week from today.
- c) The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the advocates for the Petitioner so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this petition and a copy of the same shall be furnished by the advocates for the Petitioner to the advocates for the Respondent.
- d) The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing

pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

- e) Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as mobile numbers of the respective advocates.
- f) The Arbitral Tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- g) The parties have agreed that all arbitral costs and fees of the Arbitrator shall be borne by the both sides equally and will be subject to the final Award that may be passed by the Tribunal.
- h) The parties immediately consent to a further extension of six months to complete the arbitration, should the learned Sole Arbitrator find it necessary.
- i) The parties have also agreed that the venue and seat of the arbitration will be in Mumbai.

6. The above Section 9 Petition shall be treated heard and disposed of by the Arbitral Tribunal as an Application under Section 17 of the Arbitration Act. The Respondent shall be at liberty to file an affidavit in reply to the Section 9 Petition (now converted into a Section 17 Application) before the Arbitral Tribunal. If any party wants to file any further affidavits, they may do so, but only with the leave of the Arbitral Tribunal.

7. The above Section 9 Petition is disposed of in the aforesaid terms.

8. It is made clear that, I have not opined on the merits of the matter and the learned Arbitrator shall decide now the converted Section 17 Application on its own merits and in accordance with law.

9. All contentions of both sides are expressly kept open to be agitated before the Arbitral Tribunal.

10. All parties to act on an authenticated copy of this order digitally signed by the Personal Assistant /Private Secretary/Associate of this Court.

(B. P. COLABAWALLA, J.)