

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4284 OF 2015

SUBHASH MANAKCHAND ZAMBAD
VERSUS
MOHANLAL BABULAL BASSAYYE AND OTHERS

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

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 4, 2022

PER COURT :

1. Heard learned Advocate Mr.Kasliwal for the petitioner who has instituted the petition being aggrieved by the order dated 16/07/2014 passed by the 4th Joint Civil Judge, Sr.Division, Aurangabad. The order impugned came to be passed on an application below Exh.23 in a Special Civil Suit No.163/2012 instituted by the plaintiff/the petitioner seeking Specific Performance of Contract against the respondents. The basis of the suit was an agreement of sale dated 25/01/2001 executed between the petitioner/plaintiff on one hand and respondent Nos. 1 to 8 on the other hand.

On summons being issued, defendant Nos. 1 to 3 moved an application before the Court, pleading that the Court has no jurisdiction

to entertain the present suit and it needs to be referred for arbitration in view of Clause 10 contained in the agreement dated 25/01/2001. In view of that, a preliminary issue came to be framed by passing an order below Exh.1 pursuant to the maintainability of the suit and the jurisdiction of the Court to entertain the present suit.

2. By referring to Clause 10 of the Arbitration Agreement, the learned Judge, on conducting the preliminary enquiry and answering the preliminary issue in the negative, directed the parties to approach the Arbitrator in terms of the said clause.

It would be therefore necessary to refer to the said Clause 10 in the said agreement, which read as :-

"10. That, during the agreement period and before executing development agreement if any dispute arise between the parties it will be refer to the Arbitrator and name of the arbitrator will be mutually decided by both the parties and decision of the arbitrator will be binding on both the parties. If the transaction and agreement could not continue between the parties, Second party will pay the amount paid by First Party and also will pay the expenses incurred for obtaining the permission and expenses of construction of the compound wall and

levelling etc. and other expenses with interest at the rate of Rs.18% p.a. to the First Party."

3. In the wake of Section 8 of the Arbitration and Conciliation Act, the finding rendered is that the suit is not maintainable before the Court and the application moved for referring the matter to the Arbitrator in terms of the Arbitration Agreement, came to be granted. I see no legal infirmity in the impugned order, in the wake of Clause 10 contained in the Arbitration Agreement.

In such circumstances, by upholding the impugned order, the writ petition is dismissed.

(BHARATI H. DANGRE, J.)