

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 78 OF 2022

Smt. Shalini Nilkanth Raskar

...Petitioner

Versus

Mr. Sandeep N. Jani

...Respondent

Mr. Tejesh Dande a/w Mr. Bharat Gadhavi i/by Tejesh Dande & Asso.
for the Petitioner.

None for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 07 July 2022

ORDER :

1. Heard the learned Counsel for the Petitioner.
2. The Respondent has been served and an Affidavit of Service dated 7th July 2022 is tendered and taken on record. The track consignment shown as Exh.B of Affidavit of Service shows the item has been delivered to the Respondent. The Respondent has remained absent, inspite of being served notice of today's date, when

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the Arbitration Petition is listed, high on board.

3. In view thereof, the Arbitration Petition has been heard.

4. The Arbitration Petition has sought appointment of an arbitrator for adjudicating the differences and disputes between the parties arising out of the Development Agreement dated 23rd December 2009.

5. Learned Counsel appearing for the Petitioner has apprised this Court to the fact that the Suit has been filed by the Petitioner before the Joint Civil Judge Senior Division (“**CJSD**”), Pune bearing Special Civil Suit No. 151 of 2012 for declaration that the Defendant No. 1 who is the Respondent herein had committed breach of the Development Agreement dated 23rd December 2009 and seeking certain monetary payments under the said Development Agreement dated 23rd December 2009 as well as cancellation of agreement executed between the Defendant No. 1 and Defendant No. 2 as being void. By an order dated 1st February 2022, the Joint CJSD, Pune considered the application on behalf of the Plaintiff under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the

parties in the Suit to arbitration for adjudicating of dispute arising out of the Development Agreement dated 23rd December 2009. The Joint CJSD allowed the application by finding that the subject matter of the Suit is referable to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996.

6. Learned Counsel appearing for the Petitioner has thereafter, referred to the Arbitration clause under the said Development Agreement which is clause 25 thereof which provides for disputes to be resolved by mutual agreement and discussions and in the event of the disputes not being resolved within 30 days then the same shall be referred to sole arbitration of a person to be mutually agreed upon in writing between the parties in accordance with the Arbitration and Conciliation Act, 1996. The Arbitration notice has also been issued on 8th April 2021 invoking arbitration under clause 25 of the Development Agreement dated 23rd December 2009 and proposing the name of an advocate as sole arbitrator to resolve the disputes and calling upon the Respondent to convey their agreement within 30 days from the receipt of notice. This has been responded to by the advocate for the Respondent vide letter dated 14th May 2021 wherein it is stated that the Respondent

is not agreeable to arbitration and called upon the Petitioner to withdraw the notice within 15 days from the Respondent's advocate's notice dated 14th May 2021.

7. Learned Counsel appearing for the Petitioner has accordingly, stated that in view of the order passed by the Joint CJSD, Pune on 1st February 2022 wherein application under Section 8 of the Arbitration and Conciliation Act, 1996 has been allowed and the subject matter of the Suit has been referred to arbitration, the present Arbitration Petition has been filed for appointment of arbitrator, as the Respondent is not agreeable to the same.

8. I have considered the submissions of the learned Counsel for the Petitioner as well as the averments in the Arbitration Petition and the fact that by the order dated 1st February 2022, the 16th Joint CJSD, Pune has allowed the application of the Petitioner herein under Section 8 of the Arbitration and Conciliation Act, 1996 and thereby referring the subject matter of the Special Civil Suit No 151 of 2012 to arbitration under clause 25 of the said Development Agreement. The Court had found that there is an arbitration agreement under clause 25 of the Development Agreement dated

23rd December 2009, which covers the subject matter of the Suit.

9. In view thereof, considering that the Respondent has been served with the Arbitration Petition as well as the notice of today's date, when the Arbitration Petition has placed high on board and which is borne out by the Affidavit of Service which is taken on record, it is appropriate to appoint an arbitrator and grant relief sought for in the Arbitration Petition. Hence, the following order is passed:-

- (i) Mr. S.R. Sathe (retired Judge of this Court) is appointed as a Sole Arbitrator to adjudicate the disputes between the Petitioner and the Respondent arising under Clause 25 of the Development Agreement dated 23rd December 2009.
- (ii) The venue of arbitration shall be in Pune.
- (iii) Office to inform the Sole Arbitrator regarding appointment.
- (iv) The Sole Arbitrator is requested to file the 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 Petition is disposed of in the above terms.
- (viii) No costs.

[R.I. CHAGLA J.]