

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**ARBITRATION PETITION NO.76 OF 2022**

Mrs. Sumalata Prabhakar Bantwal      ...Petitioner

V/S

Cupid Construction LLP and Ors.      ...Respondents

-----

Mr. Dormaan Jamshid Dalal for Petitioner.  
None for Respondents.

-----

**CORAM      :      R. I. CHAGLA, J.**

**DATED      :      1<sup>st</sup> JULY, 2022.**

**P.C.**

1.            Heard learned counsel for the parties.
2.            By this Arbitration Petition, the Petitioner is seeking appointment of a neutral sole independent Arbitrator to arbitrate and resolve the disputes between the Petitioner and the Respondents arising out of the Joint Venture Agreement dated 29<sup>th</sup> October 2013.
3.            The Respondents have been served and an Advocate is shown on the board representing them and inspite of service, none

has appeared.

4. By an order dated 16<sup>th</sup> June 2022, it was noted that an Affidavit of service dated 4<sup>th</sup> April 2022 of the Arbitration Petition by the Petitioner on the Respondents has been filed. The Respondents had failed to make an appearance on that date and as by way of last chance for the Respondents to appear, the Arbitration Petition was adjourned to 24<sup>th</sup> June 2022. It was made clear that in the event the Respondents do not appear on the next date, the Arbitration Petition will be heard in their absence.

5. Notice of the order has thereafter been served by the Petitioner on Respondents and two Affidavit of service dated 27<sup>th</sup> June 2022 to that effect has been filed and is taken on record. It is noted that on 24<sup>th</sup> June 2022, the matter could not be taken up due to paucity of time. The matter has come up today.

6. In view thereof, by the said order dated 16<sup>th</sup> June 2022, a last chance was given to the Respondents to make an appearance and noting the fact that none appears for the Respondents today, the Arbitration Petition is taken up for hearing and disposed of.

7. The learned counsel appearing for the Petitioner has taken this Court through the relevant clause in the Joint Venture Agreement dated 29<sup>th</sup> October 2013, namely clause 13 thereof which provided for the disputes to be at first instance amicably settled between the parties and in the event the disputes are not settled within one month, the disputes be referred to Arbitration as per the provisions of Arbitration and Conciliation Act, 1996. He has thereafter taken this Court to the Petitioner's Advocates' Notice dated 29<sup>th</sup> June 2021, addressed to the Respondents wherein the Respondent was called upon them to settle the dues of the Petitioner being an amount of Rs.9,30,12,793/- towards the balance sale proceeds legally receivable by her from the Respondents within one month from receipt of the notice and failing which the Petitioner shall invoke Arbitration under clause 13 of the Joint Venture Agreement dated 29<sup>th</sup> October 2013. The Respondent failed to response to the said Notice dated 29<sup>th</sup> June 2021.

8. In view thereof, the Petitioner through their Advocates addressed Notice dated 25<sup>th</sup> October 2021, invoking Arbitration in terms of clause 13 of the Joint Venture Agreement and suggesting the name of Dr. Shalini Phansalkar Joshi, (Retired Judge of this

Court) as an Arbitrator. The Respondents were called upon to agree to the appointment of Arbitrator within 30 days from the receipt of the notice, failing which the Arbitration Petition will be filed under Section 11 of the Arbitration and Conciliation Act, 1996.

9. The Respondents through their Advocate's Notice dated 18<sup>th</sup> November 2021 responded to the Notice invoking the Arbitration and wherein it is stated that the Respondents are going to settle the dispute and hence there is no need for Arbitration proceedings.

10. Thereafter, the Arbitration Petition has been filed on 25<sup>th</sup> March 2022 for appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 as the Respondents have neither settled the dispute nor agreed to arbitration.

11. I have considered the submissions of the learned counsel for the Petitioner as well as noted that there is an Arbitration Agreement under clause 13 of the Joint Venture Agreement dated 29<sup>th</sup> October 2013. Further, I have considered that the First Advocate's Notice for amicable settlement of the legal dues of the Petitioner had not been settled and thereafter a Notice invoking Arbitration had been issued by the Advocates for the Petitioner to

which the Respondents had in response not disputed the Arbitration Agreement, but only mentioned that Arbitration proceedings were not necessary as the disputes will be settled amicably. Thereafter, there has been no settlement and hence it would be appropriate to grant of relief sought for Arbitration Petition. Hence, the following order is passed:-

12. In view thereof, following order is passed:-

- (i). Dr. Shalini Phansalkar Joshi, (Retired Judge of this Court) is appointed as Sole Arbitrator to decide the disputes between the Petitioner and the Respondents arising out of Joint Venture Agreement dated 29<sup>th</sup> October 2013 executed between them.
- (ii). The venue of arbitration shall be in Pune as per the said Joint Venture Agreement dated 29<sup>th</sup> October 2013.
- (iii). Office to inform the Sole Arbitrator regarding his appointment.
- (iv). The Sole Arbitrator is requested to file her 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.)**