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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1998 OF 2021

SHIVNATH BABAN PATIL

....PETITIONER

V/s.

VIJAYA PRABHAKAR VAITI

.....RESPONDENT

Mr. Kishor S. Patil for the Petitioner

Mr. Mangesh S. Parte for Respondent nos. 1 & 3

Mr. Deepak Chitnis i/b M/s. Deepak Chitnis-Chiprikar & Co. for
Respondent no. 7

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 15, 2022.

P.C.:

1) Heard Mr. Kishor Patil, learned counsel for the Petitioner.
Petitioner initiated Special Civil Suit No. 133/2021 seeking partition
and separate possession.

2) In the said proceedings, the Trial Court while dealing with the
prayer moved by the Defendant under Exh. 23, ordered return of
Plaint with liberty to institute arbitration proceedings. As such, this
petition.

3) Submissions of Mr. Patil, learned counsel for the Petitioner-Plaintiff are, development agreement dated 29/12/2012 and subsequent supplementary agreement were already terminated. According to him, devolution of share of the coparcener is required to be appreciated and as such, the Court below committed an error in referring the matter to Arbitrator who has not jurisdiction to entertain the Arbitration. As such, according to him, scope of Arbitration agreement does not permit entertaining the Suit claim before the Arbitrator and that being so, order impugned is not sustainable.

4) Counsel for Respondent-Defendant would support the order impugned based on the observations made therein.

5) Considered submissions.

6) In the Development Agreement dated 29/12/2012, admittedly there is an Arbitration clause and the supplementary Agreement is in continuation to terms of the development Agreement dated 29/12/2012.

7) Apart from above, it has to be noted that all the parties to the Suit including all the Defendants are signatory to the development

Agreement which contains arbitration clause.

8) Whether there is arbitrable dispute and whether Arbitrator has jurisdiction to entertain such arbitration proceedings can be an issue to be decided by the Arbitrator.

9) Keeping open such option to the Petitioner, I hardly see any reason which warrants interference in the impugned order. Petition as such, stands dismissed with liberty as observed herein above.

[NITIN W. SAMBRE, J.]