

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

ARBITRATION PETITION NO. 60 OF 2022

Shri. Sunil Rajram Bajaj & Anr.

...Petitioners

Versus

M/s. Om sai Construction

...Respondent

* * *

- Mr. Jitendra Oka, for the petitioners.
- Mr. Rahul Kadam, for the Respondent

* * *

CORAM : MANISH PITALE, J

DATE : 19TH OCTOBER, 2022.

P. C. :

1. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner is seeking appointment of a sole Arbitrator in terms of the Arbitration clause in the development agreement executed between the parties.

2. The learned Counsel for the Petitioner submits that clause 34 of the agreement is an Arbitration clause and since the nature of dispute raised on behalf of the petitioner involves interpretation of clauses of the agreement, by legal notice dated 22nd January, 2019, the petitioner had invoked the Arbitration clause and proposed the name of a particular Arbitrator for resolution of the disputes between the parties. There was no response on behalf of the Respondent to the said legal notice, prompting the petitioner to file the present petition for appointment of Arbitrator.

3. The learned Counsel appearing for the Respondent submitted that the nature of the Arbitration clause, indicated that the disputes sought to be raised on behalf of the petitioner would not be covered under the same. On this basis it was submitted that there was no cause for the petitioner to file the present petition under Section 11 of the said Act.

4. This Court has perused the clauses of the said development agreement, including clause 34. The aforesaid clause provides that if any doubts arise about the interpretation of the clauses of the said agreement, Arbitration could be resorted to for resolution of said doubts/disputes.

5. A perusal of the legal notice issued on behalf of the petitioner would show that the claim sought to be raised on behalf of the petitioner concerns, 38% of constructed area, to which the petitioner is laying claim, based on interpretation of the clauses of the agreement. This would indicate that the dispute sought to be raised on behalf of the petitioner can be said to be Arbitrable under the aforesaid Arbitration clause, which is part of the development agreement.

6. It is undisputed that upon the petitioner invoking the Arbitration clause, there was no response on behalf of the

Respondent. In these circumstances, this Court is of the opinion that sole Arbitrator can be appointed.

7. The learned Counsel for the parties, on instructions, submit that the place of Arbitration can be Mumbai and they agree upon appointment of Mr. Shyam Nivrutti Patole, Advocate as the sole Arbitrator for adjudicating the disputes between the parties. The contact details of the proposed Arbitrator are as follows :

1. ***Mr. Shyam Nivrutti Patole, Advocate Mumbai.***
*Off : Ground Floor, Karim Chamber, Ambalal Doshi Marg,
Off. Bombay Stock Exchange, Near Hamam House, Fort,
Mumbai.*
*Permanent Address : At Post Medankar Wadi, Post Chakan,
Tal. Khed, Dist. Pune - 410501,
Mob. Nos. 9822912234, 9175759511
Email : shamrao1972@gmail.com
shamraopatole1972@gmail.com*

8. In view of the above, Mr. Shyam Nivrutti Patole, Advocate is appointed as a sole Arbitrator. The parties shall communicate this order to the learned Arbitrator at the earliest. The learned Arbitrator is requested to communicate consent and Disclosure Statement as per Section 11(8) r/w 12(1) of the said Act to the Registrar (Judicial) of this Court within four weeks from today.

9. The parties shall appear before the learned Arbitrator on 28th November, 2022. The Fees of the Arbitrator shall be in terms of

Schedule IV to the aforesaid Act.

10. The petition stands disposed of.

(MANISH PITALE, J.)