

Prajakta Vartak

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

**INTERIM APPLICATION NO. 1896 OF 2019**

**IN**

**ARBITRATION PETITION NO. 129 OF 2018**

M/s. Shubh Corporation through Authorized  
Signatory and Partner ..Applicant

In the matter between  
M/s. Shubh Corporation through Authorized  
Signatory and Partner ..Petitioner

**Vs.**

M/s. Darshan Developers through Partners ..Respondent

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Ms. Shraddha Vavhal with Mr. Hassnain Kazi and Mr. Arshad Nehal for  
Applicant/Petitioner.

None for Respondent.

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**CORAM : G.S. KULKARNI, J.**

**DATE : AUGUST 17, 2022.**

**P.C.:**

1. This application is filed in the above disposed of petition which came to be allowed in terms of the order dated 11 September, 2019 whereby Mr. Justice D. G. Karnik, Former Judge of this Court was appointed as a sole arbitrator to adjudicate the disputes between the parties which had arisen under the Agreement of Joint Venture/ Development Agreement dated 19 April, 2012. The learned arbitrator so appointed had addressed a letter dated 07 November, 2019 to the parties informing that in a group of suits filed by some of flat purchasers in the structures constructed/to be constructed in the property which is subject matter of the dispute in the arbitration, His Lordship's son had appeared as a counsel on behalf of the flat holders. In these

circumstances, the parties are informed that it would not be appropriate for him to act as an arbitrator in the disputes and therefore, His Lordship has recused himself from the arbitration, directing the parties to take appropriate steps as they deem fit for appointment of another arbitrator.

2. This application was listed before this Court (G. S. Patel, J.) on 06 January, 2020 when the Court had passed the following order:-

“1. The learned sole arbitrator appointed by this court is unable to take up the assignment for the reasons set out in the Interim Application. The Interim Application will need to be served. At present there is no record of service through Court. Liberty to serve privately in addition to fresh service through Court.

2. List the matter on 10<sup>th</sup> February 2020.”

3. Accordingly, the applicant has taken all steps and the respondent was served. It is seen from the order dated 11 September, 2019 that respondent no.1 was represented by Mrs. Leena Shah i/b. M/s. Shah & Furia Associates. Also appearance of M/s. Shah & Furia Associates is shown on the cause list. It appears that the respondent is not interested to appear in the present application and contest the same.

4. In the aforesaid circumstances, eminently, a substitute arbitral tribunal is required to be appointed. Accordingly, the order dated 11 September, 2019 passed by this Court in so far as the appointment of Mr. Justice D. G. Karnik as an arbitrator would be required to be modified by the following order:-

#### **ORDER**

(i) Paragraph 6(i) of the order dated 11 September, 2019 appointing

Mr. Justice D. G. Karnik be deleted and the same be substituted by the following order:-

- (ii) Mr. Justice Sunil P. Deshmukh, Former Judge of this Court is appointed as a sole Arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement of Joint Venture/ Development Agreement dated 19 April, 2012;
- (iii) The learned sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial), to be placed on record of these proceedings with a copy to be forwarded to both the parties;
- (iv) Except for the above modification, the order dated 11 September, 2019 shall remain undisturbed.
- (v) The parties are directed to appear before the arbitral tribunal as early as possible on a date which may be fixed by the learned sole arbitrator as appointed;
- (vi) Needless to observe that as the proceedings being quite old, the learned arbitrator shall take up the arbitral proceedings and make an endeavour to dispose of the same at the earliest and as provided under Section 29A of the Act.
- (vii) The application is disposed of in the above terms. No costs.
- (viii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“Mr. Justice Sunil P. Deshmukh, Former Judge of this Court  
Address: Flat No.1102, Tower 55, Future Towers, Amanora  
Park Town, Hadapsar, Pune – 411 028.  
Mobile No. 9545028282  
Email ID : sunilpdeshmukh@gmail.com”

[G.S. KULKARNI, J.]