

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 36 6 OF 2019

SHRADDHA
KAMLESH
TALEKAR

Mavji Narsi Chouhan
Vs.

...Applicant

1. Samarth Krupa Developers
& 6 Ors.

... Respondents

Mr.Raj Jayasing Khude for applicant.

CORAM : N. J. JAMADAR, J.

DATE : 1ST APRIL, 2022

P.C.:

1. This is an application under section 11 of the Arbitration and Conciliation Act, 1996 ('the Act, 1996') for appointment of an Arbitrator for adjudication of the disputes between the applicant and respondent Nos.1 to 7, arising out of the Memorandum of Understanding, dated 7th May 2005 ("MOU").

2. The applicant claims that he has ownership rights over the residential structures being B.M. Chouhan Chawl, Siddharth Nagar, Santacruz (East), Mumbai. The respondent No.1 is a partnership firm. The respondent Nos. 2 to 7 are the partners of respondent No.1-firm. The respondent No.1 is engaged in the business of construction, development and redevelopment of the properties in Mumbai.

3. On 7th May 2005, a Memorandum of Understanding was executed between the applicant and respondent No.1 for development of a Slum Rehabilitation Scheme in respect of B.M. Chouhan Chawl. The respondent No.1 agreed to pay a consideration of Rs.8,00,000/- and three flats admeasuring 400 sq.ft., each viz, two flats on the second floor and one on the first floor in the building to be constructed thereat. The redevelopment was to be completed on or before 31st October 2006.

4. The respondent No.1 paid a sum of Rs.51,000/- to the applicant. The respondent No.1 committed default in handing over the flats, as agreed, under the terms of the MOU and in payment of the balance consideration of Rs.7,49,000/-. The applicant made repeated demands but to no avail. The MOU provides for resolution of the dispute between the parties through arbitration. The applicant, thus, invoked the said arbitration clause and called upon the respondents by notice dated 3rd April 2019 to give consent to the appointment of Advocate Mr. L.K. Tripathi as an Arbitrator, to adjudicate upon the disputes between the parties. The notice was returned with the remark 'unclaimed'. Hence, the applicant was constrained to prefer this application.

5. Notice was duly served on the respondents. Since none appeared for the respondents, by an order dated 13th December 2019, this Court directed the partners of the respondent No.1 to remain present before the Court on the adjourned date by themselves or through their Advocates. The applicant was given liberty to take the assistance of the Senior Inspector of local police station in the service of notice on the respondents.

6. The applicant has filed an affidavit of service, dated 13th January 2020. The notice has been duly served on respondent No.1. Yet, none appeared for the respondents.

7. Heard Mr. Raj Khude, the learned counsel for the applicant and perused the material on record, including the MOU, dated 7th May 2005.

8. It seems that under the said MOU, the respondents had agreed to execute the Slum Rehabilitation Scheme under the name and style of Ajay Co-operative Housing Society (Proposed) at M.B. Chouhan Chawl. The MOU records that the applicant is the owner of six structures in the said Chouhan Chawl. In lieu thereof, the respondents would pay a sum of Rs.8,00,000/- and three flats admeasuring 400 sq.ft., each, to the applicant, in the building to be constructed thereon. The MOU, *inter-alia*, contains

the following arbitration clause :

“In any case of any dispute/difference arising between the parties herein, the parties shall appoint Arbitrator/Arbitrators and settle the same, if any.”

9. The legal position is now crystallized to the effect that in an application under section 11 of the Act, 1996, the Court has to concentrate on the existence of the arbitration agreement. The scope of enquiry is extremely limited. Even the issue of arbitrability of the dispute is required to be left, to be decided by the Arbitrator.

10. In the case at hand, the existence of an arbitration agreement is established. The applicant has given notice to the respondents under section 21 of the Act, 1996. The respondents chose not to respond to the said notice. Nor the respondents cared to appear before this Court, despite service of notice of this application, twice.

11. In view of the above, the application deserves to be allowed.

12. Hence, the following order :

O R D E R

- (i) The arbitration application stands allowed.
- (ii) Mr.Yash Momaya, an Advocate practicing in this

Court, is appointed as Sole Arbitrator to adjudicate upon claims and counter claims, if any and/or all the disputes which emanate from the Memorandum of Understanding, dated 7th May 2005, between the parties.

(iii) The learned Arbitrator is requested to file his disclosure statement under section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 within two week with the Prothonotary and Senior Master and provide copies to the parties.

(iv) Parties to appear before the Sole Arbitrator on a date to be fixed by him at his earliest convenience.

(v) Fees payable to the Sole Arbitrator will be in accordance with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

The Arbitration Application stands disposed in the above terms.

No costs.

(N. J. JAMADAR, J.)