

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 99 OF 2022

USHA NAGPAL

...Petitioner

Versus

Prakash Estates and Ors.

...Respondents

...

Mr.Joel J.Carlos, for the Petitioner.

Mr.Nitin G.Raut i/b. PVas & Co., for Respondent Nos.1 to 3.

...

CORAM : G. S. KULKARNI, J

DATE : 8 MARCH 2022

P. C.

1. Leave to amend to delete respondent Nos.4 and 5. Amendment be carried out in the cause title during the course of the day. Re-verification is dispensed with.

2. This is a petition filed under Section 9 of the Arbitration and Conciliation Act,1996 (for short '**the Act**'), whereby the petitioner aged 82 years, a senior citizen, is before the Court praying for interim reliefs pending the arbitral proceedings. The case of the petitioner is that the disputes have arisen between the petitioner and respondent No.1, which is a partnership firm, of which respondent Nos.2 and 3 are the partners. Respondent No.1 has been appointed as a developer under a tripartite agreement dated 14 December 2010 between the

Petitioner, Respondent No.1 and the Co-operative Societies.

3. Learned Counsel for the parties state that although the agreement in question is a tripartite agreement, the disputes which would be required to be adjudicated by the arbitral tribunal, are the disputes between the applicant and respondent Nos.1 to 3. The arbitration agreement between the parties is contained in Clause 51 of the said development agreement, which the parties agree be confine only to be between the petitioner and respondent nos. 1 to 3. The learned counsel for the parties state that none of the rights of the Societies, whatsoever, shall stand affected in any manner on any outcome of the arbitration proceedings shall not be binding on the Societies.

4. Considering the nature of such agreement, which is accepted by the parties as a modified arbitration agreement as arrived between the parties to the present proceedings, learned Counsel for the parties are agreeable that the disputes now be referred for adjudication by appointing a sole arbitrator. As also the present petition under Section 9 be permitted to be converted into an application under Section 17 to be adjudicated by the arbitral tribunal. Learned Counsel for respondent Nos.1 to 3 submits that his clients intend to file a reply to this petition which would now be a reply to the Section 17 application.

5. In view of the above consensus and the parties before the Court having

consented for adjudication of their limited *inter se* rights between the petitioner and respondent Nos.1 to 3, in my opinion, the request as made on behalf of the parties in these peculiar circumstances is required to be accepted. The petition thus can be disposed of by referring the disputes to arbitration of a sole arbitrator. The petition is accordingly disposed of by the following order:-

ORDER

- (i) Mr. Rajesh Datar, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the tripartite agreement in question dated 14 December 2010, which is agreed to stand restricted only between the petitioner and respondent nos. 1 to 3.;
- (ii) The learned sole prospective 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 Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;
- (iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) The present Section 9 petition is permitted to be converted into a Section 17 application to be adjudicated before the arbitral tribunal. All contentions of the parties in that regard are expressly kept open.

(vi) Needless to observe that respondent Nos.1 to 3 are at liberty to file their reply to the Section 17 application.

(vii) All contentions of the parties on merits of the matter are expressly kept open;

(viii) The Arbitral Tribunal shall make an endeavour to adjudicate the Section 17 application as expeditiously as possible, considering that the applicant is a Senior Citizen, and let the same be decided within four weeks of the presentation of the Section 17 application.

(ix) Let a statement of claim be also filed within three weeks from the arbitral tribunal entering reference.

(x) The petition is disposed of in the above terms. No costs

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(xi) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr. Rajesh Sudhakar Datar, Advocate
2, Shrikrishna Bhuwan, Prashant Nagar,
Near Rajdeep Society, Thane – 400 602,
(Tel.) No. 022-25402050
e-mail id : rajeshdatar@yahoo.co.in

(G. S. KULKARNI,J.)

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