

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 8 OF 2023

Mrs. Rakhi Rajesh Bang ...Petitioner  
Vs.  
Mr. Rajendra Ramvilas Jakhotia Proprietor  
of M/s. Sitaram Developers and Ors. ...Respondents

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Mr. Drupad S. Patil a/w. Mr. Namitkumar S. Pansare, for the  
Petitioner.  
Mr. Nitin V. Gangal a/w. Ms. Namita Mistry, for the  
Respondents.

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CORAM : MANISH PITALE, J.  
DATE : 11 JANUARY 2023

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. The petitioner has filed present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator in the context of an arbitration clause contained in a Development Agreement executed between the parties.

2. The arbitration clause reads as follows:

*Article 16 – Arbitration : If any dispute or difference arises between the parties hereto during the subsistence of this Agreement or thereafter, in*

*connection with the validity, interpretation, implementation or breach of this Agreement, the parties shall endeavor to resolve the same by referring the same to the respective Advocates for the parties by way of mediation. In the event that any dispute or difference cannot be resolved through mediation, the parties shall refer such dispute or difference for arbitration by three arbitrators. The parties agree that for the purposes of this ARTICLE, the “LAND OWNER” shall be entitled to appoint one arbitrator whereas the “BUILDER DEVELOPER PROMOTER” shall be entitled to appoint one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator. The Parties agree that the decision of the arbitrators shall be final and binding upon the Parties. The arbitration shall be conducted in English language and the place of arbitration shall be in Khopoli and the laws applied at such arbitration shall be the Laws of India. The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactment or modification thereto. It is agreed that except in the event of termination of this Agreement, the Parties shall continue to observe and perform their respective obligations under the terms of this*

*Agreement despite the pendency of mediation / arbitration proceedings.*

3. It appears that dispute arose between the parties and a suit was filed before the Civil Court. Upon noticing the arbitration clause, in the development agreement, the suit was disposed of, leaving the parties to initiate the process of arbitration.

4. The arbitration clause, quoted above, indicates that parties shall initially undertake an exercise of mediation and upon failure thereof, to initiate the process of arbitration. There is no dispute about the fact that mediation was attempted, but the same failed. In this backdrop, on 14/3/2019, the petitioner invoked the arbitration clause, but it seems that an arbitrator could not be appointed due to dispute on the said aspect also.

5. Upon notice being issued, the respondents have appeared through counsel. The arbitration clause is not disputed and it is reiterated that dispute appears to be on the name of the arbitrator. After some deliberation before this Court, the learned counsel for the parties jointly submitted that Mr. Suyog Yashwant Bartake may be appointed as the sole arbitrator for resolution of dispute between the parties. Accordingly, Mr. Suyog Yashwant Bartake is appointed as the sole arbitrator.

6. The details of the sole arbitrator are as follows:

Mr. Suyog Yashwant Bartake  
Poonam Co.Op. Housing Society,  
Alibaug HO, Near Government Colony,  
Alibaug – 402 201.  
Mobile No.9422493308  
[sybartake@gmail.com](mailto:sybartake@gmail.com)

7. The parties undertake to inform the learned Arbitrator immediately about the order passed today.

8. The learned arbitrator shall communicate his consent and disclosure statement as per Section 11(8) and 12(1) of the aforesaid Act, within four weeks from today to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be as per schedule IV to the said Act.

9. All contentions of the parties are kept open.

10. The petition stands disposed of, in aforesaid terms.

**MANISH PITALE, J.**