

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 38 OF 2021

M/s. Hariharr Developers,
Through its Mr. Dhananjay P Ralhad Pande ...Petitioner

Versus

Subhash Shrihari Dahiphale & Anr. ...Respondents

- Mr. Prathamesh B. Bhargude and Mr. Sumit Sonare, for the Petitioner.
- Ms. Vrushali Maindad i/by Hrishikesh P. Giri, for the Respondents.

CORAM : MANISH PITALE, J

DATE : 15th MARCH, 2023.

P. C. :

1. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Petitioner is seeking appointment of an Arbitrator for resolution of disputes. The Petitioner relies upon a clause pertaining to arbitration incorporated in the partnership deed executed between the parties. The arbitration clause reads as follows :

“18) ARBITRATION :

All disputes and differences, whatsoever which shall arise either during the partnership or afterwards between the partners or their legal representatives touching these presents or the construction or application thereof or any clause or things there in contained or any account, valuation of division of assets, debts or liabilities to be made hereunder or as to any act, deed or omission if any partner of as to any other matter in any way relating to the partnership the affairs or duties or liabilities of any. Person under this indenture shall be referred to

arbitration subject to the Indian Arbitration Act, or any statutory modification thereof for the time being in force in India.”

2. It is the case of the Petitioner that pursuant to disputes that arose between the parties, by notice dated 21st November, 2020, the Petitioner invoked the arbitration clause and proposed the name of a former District Judge as the sole Arbitrator for resolution of disputes between the parties.

3. The Respondents sent their reply notice and denied the claims made on behalf of the Petitioner. They also disagreed with the appointment of the proposed Arbitrator.

4. In view of the fact that the agreed procedure for appointment of Arbitrator did not lead to appointment of an Arbitrator for resolution of disputes, the Petitioner was constrained to file the present petition.

5. The Respondents have appeared through Counsel. In view of the foregoing facts recorded by this Court, it is clear that jurisdiction can be exercised under Section 11(6) of the said Act for appointment of the sole Arbitrator for resolution of disputes between the parties. The arbitration clause does not specify the place of arbitration, but it is an admitted position that the parties are in Pune and that the partnership deed was also executed at Pune. In that

light, the learned Counsel for the parties submit that a retired District Judge available at Pune could be appointed as the sole Arbitrator.

6. Accordingly, **Mr. V.P. Utpat**, former District Judge, is appointed as the sole Arbitrator for resolution of disputes between the parties. The details of the learned Arbitrator are as follows :

Mr. V.P. Utpat,
C-70, Mahaveer Park, Behind Nexa Showroom,
Pune – Satara Road, Pune – 411 037.
Mob. 9423044478

7. The arbitration proceedings shall be conducted at Pune with the consent of the parties.

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

9. The learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) r/w Section 12(1) of the said Act, to the Registrar (Judicial) of this Court, within four weeks.

10. The fees of the learned Arbitrator shall be as per Schedule IV to the Aforesaid Act.

11. All questions are kept open.

12. The petition stands disposed of.

(MANISH PITALE, J.)