

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

ARBITRATION PETITION NO. 106 OF 2022

Mr. Shaukat Kasam Shaikh (Khatik)	...Petitioner
Vs.	
M/s. Siddhi Vinayak Builders and Developers Ltd.	...Respondent

Mr. Dilip Vishvakarma i/b. Mr. Sangram Suryavanshi, for the
Petitioner.
Mr. Yuwraj D. Patil, for the Respondent Nos.6A, 6D and 8 to 10.
Mr. Ramakant Paranjape, for the Respondent Nos.1, 2, 4 and 5.

**CORAM : MANISH PITALE, J.
DATE : 20 JANUARY 2023**

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. By this petition, filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has approached this Court for appointment of arbitrator in the context of an arbitration clause contained in a development agreement executed with the contesting respondents.

2. The contesting respondent Nos.1 to 5 have appeared through counsel. It is an admitted position that respondent Nos.6 to 10 are proforma respondents.

3. The learned counsel for the petitioner invited attention of this Court to the contents of the development agreement executed between the parties, particularly, Clause 34 of the said agreement. The said clause specifically provides that in case of disputes in the context of the development agreement, the same would be referred to arbitration.

4. Having heard the learned counsel for the rival parties, this Court has perused the said arbitration clause and also invocation notice dated 18/11/2020, sent on behalf of the petitioner, stating the disputes that have arisen between the parties and seeking reference of the same to arbitration.

5. On 21/12/2020, the contesting respondents through their Advocate filed reply and stated that in the light of the statements made in the reply, there was no occasion to refer the matter to arbitration.

6. Even before this Court, the learned counsel appearing for the contesting respondents submitted that such respondents have given more than what was agreed between them and that therefore, there was no question of arbitration between the parties. This is seriously disputed on behalf of the petitioner.

7. In view of the above, this Court is of the opinion that the

aforesaid aspect of the matter highlighted on behalf of the contesting respondents i.e. the very existence of the grievance can be left for decision of the arbitrator. This is in tune with the law laid down by the Supreme Court in the case of *Vidya Drolia & Ors. Vs. Durga Trading Corporation*¹

8. Hence, this Court is inclined to exercise jurisdiction under Section 11(6) of the aforesaid Act to appoint a sole arbitrator for resolution of disputes between the parties. Since the development agreement pertains to property at Thane, it would be appropriate to appoint an arbitrator available at Thane. In view of the above, Shri. Sadashiv S. Deshmukh, a retired District Judge available at Thane is appointed as the sole arbitrator. The details of the learned arbitrator are as follows:

Shri. Sadashiv S. Deshmukh,
403, Jupiter Building No.9,
(Gavanndbaugh), Pokharan Road No.2,
Thane (W) – 400 610.
Mobile No. 9820553525

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

¹(2021) 2 SCC 1

10. The parties to communicate this order to the learned arbitrator immediately.
11. All contentions of the parties are kept open.
12. The petition stands disposed of, in aforesaid terms.

MANISH PITALE, J.