

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

ARBITRATION PETITION NO. 84 OF 2022

Mr. Dilip Bhimraso Kapre

...Petitioner

Versus

Shri. Samarth Krupa Builders & Developers
Partnership Firm & Ors.

...Respondents

* * *

- Mr. Dushyant S. Pagare, for Petitioner.
- Mr. Aditya S. Raktade, for Respondent No. 2.
- Mr. Dnyanesh Patil, for Respondent Nos. 3 and 4.

* * *

CORAM : MANISH PITALE, J

DATE : 24th APRIL, 2023

P. C. :

1. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Petitioner has prayed for appointment of an Arbitrator for resolution of disputes between the parties.

2. The Arbitration Clause is contained in a Partnership Deed dated 18th September, 2014. The Petitioner and Respondent Nos. 2, 3 and 4 were Partners in the Respondent No. 1 partnership firm. It is reported to this Court that Respondent No. 3 has expired.

3. Respondent Nos. 2 and 4 i.e. the partners other than the Petitioner have appeared through Counsel. In view of this fact, service on Respondent No. 1 i.e. the partnership firm is dispensed with, particularly for the reason that all the three surviving partners are before this Court.

4. The learned Counsel for the Petitioner submits that clause 23 of the Partnership Deed provides for resolution of disputes, if any, between the parties by way of Arbitration. It is specified that the place of arbitration would be Kalyan.

5. The learned Counsel for the Petitioner has referred to notice dated 27th September, 2021, issued to the Respondents, whereby arbitration clause was invoked for resolution of disputes between the parties. It is alleged on behalf of the Petitioner that Respondent Nos. 2 to 4 violated the terms of the Partnership Deed and proceeded to unilaterally take some steps, to the detriment of the Petitioner.

6. In response to the said notice, only Respondent Nos. 3 and 4 sent a reply. They disputed the claim of the Petitioner and at one place even claimed that the Partnership Deed did not bear their signatures.

7. When the petition is called out for hearing, Respondent Nos. 2 and 4 have appeared through Counsel. A reply affidavit on their behalf is ready for filing. This Court has perused the same. The said reply affidavit be placed on record within one week from today.

8. It is significant that although in the reply to the invocation

notice, at one place, Respondent Nos. 3 and 4 did state that the Partnership Deed does not bear their signature, but there is no such objection raised in the reply to the present petition. In fact, the claims of the Petitioner are denied and disputed on merits.

8. This Court has perused copy of the Partnership Deed and it is found that signatures of all the parties have been appended on each page on the said document and further that the photographs of the parties along with copies of their documents of identity are also annexed to the copy of the Partnership Deed. This Court is satisfied that there is indeed an arbitration agreement between the parties, contained in clause 23 of the aforesaid Partnership Deed.

9. The tenor of the reply affidavit on behalf of Respondent Nos. 2 and 4 to the present petition also shows that there are indeed disputes between the parties that need to be resolved through arbitration.

10. The arbitration clause provides for Kalyan as the place of arbitration. In that light, an Arbitrator available in Kalyan/Thane could take up the assignment for resolution of disputes between the parties.

11. Accordingly, Mr. Sanjay Paithane, former District Judge, is appointed as the sole Arbitrator. The details of the learned

Arbitrator are as follows :

Mr. Sanjay D. Paithane,

5A/31, Pareira Nagar, Khopat, Thane - 400 032.

Mob. No. 9819176061

Email : paithane@outlook.com

12. The parties undertake to inform the learned Arbitrator about the order passed today, at the earliest.

13. 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.

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

15. It is noted that the arbitration clause provides for Kalyan as the place of arbitration, but the learned Arbitrator would be at liberty to determine the venue of arbitration.

16. All questions are kept open.

17. The petition stands disposed of.

(MANISH PITALE, J.)