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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.135 OF 2023

Uttam Satav

...Petitioner

Versus

Rakesh Dattatray Pawar

...Respondent

Mr. Siddhesh Bhole with Mr. Yakshay Chheda and Ms. Anushree
Koparkar i/b. SSB Legal and Advisory for the Petitioner.

Rujuta Joshi, i/b. Kinjal Shah for the Respondent.

CORAM : R.I. CHAGLA J.
DATE : 7TH OCTOBER, 2023.

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking appointment of Sole Arbitrator and refer all claims, disputes and differences arising out of and between the Petitioner and Respondent in furtherance of the Orders dated 28th February, 2022 and 16th June, 2022 passed by this Court in Civil Revision Application No.152 of 2021 and Arbitration Petition No.59 of 2022 and in view of Clause 1(w) of the Agency Agreement dated 20th August, 2014.

2. Having considered the averments in the Petition as well as the fact that the Respondent had filed Section 8 application to refer the subject matter of the Civil Suit filed before the 12th Civil Judge, Senior Division, Pune to arbitration in view of the arbitration Clause 1(w) in the said agreement and which application was allowed, it is not open for the Respondent to oppose the Petition.

3. It is further relevant to note that the Petitioner has issued invocation notice dated 1st October, 2022. However, the Respondent had not responded to the said notice invoking the arbitration.

4. The learned Advocate for the Respondent states that the parties to the said agreement had agreed to the appointment of the named arbitrator Mr. Mukund Babanrao Tambe. He has submitted that it is not now open for the Petitioner to seek appointment of another arbitrator.

5. The learned Counsel for the Petitioner states that the named arbitrator in the agreement is an interested party and under Section 12 of the Arbitration and Conciliation Act, 1996, it would be necessary to appoint another Arbitrator.

6. Having considered the submissions, in my view it would be necessary to appoint an arbitrator, other than Mr. Mukund Babanrao Tambe. This is in view of the Section 12(5) of the Act read with 7th schedule and in view of the named arbitrator in the agreement being an interested party. Accordingly, a retired Judge of this Court is required to be appointed as a Sole Arbitrator to adjudicate the disputes between the Petitioner and Respondent. Hence, the following order is passed:-

(i) (Dr.) Smt. Shalini Phansalkar-Joshi (Retired High Court Judge) is appointed as Sole Arbitrator to decide the disputes between the Petitioner and the Respondent arising out of the Agency Agreement dated 20th August, 2014.

(ii) The venue of arbitration shall be in Pune.

(iii) Office to inform the Sole Arbitrator regarding her appointment.

(iv) The Sole Arbitrator is requested to file her Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration

and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.

(v) Parties to appear before the Sole Arbitrator on the date fixed.

(vi) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.

(vii) Arbitration Petition is disposed of in the above terms.

(viii) No costs.

[R.I. CHAGLA J.]