

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3971 OF 2023
IN
ARBITRATION PETITION (LODGING) NO. 92564 OF 2020**

Jayesh Pramodbhai Thakkar ... Applicant/Petitioner

vs.

Sahinder Pritamsingh Khanuja and others ... Respondents

Mr. Ankit Lohia, i/by. Mr. Preet J. Chheda for applicant/petitioner.

Mr. Uzair Kazi, i/by. YMK Legal for respondent Nos.2 and 3.

CORAM : MANISH PITALE, J

DATE : 27th APRIL, 2023

P.C. :

. By this application, the applicant prays for substitution of the learned sole arbitrator, but it was specifically submitted before this Court that since there was nothing in writing, communicated by the learned sole arbitrator appointed by this Court about his recusal, the aforesaid prayer is not being pressed.

2. In fact, the learned counsel for the applicant was at pains to point out that the conduct of the respondents in the present proceeding has been such that the learned arbitrator, a former Judge of this Court, has been unable to proceed with the arbitration proceeding. It is further alleged that the conduct of the respondents amounts to showing scant regard to the orders passed by this Court. In that light, it is submitted that this Court may consider issuing appropriate directions in the matter, to ensure that the respondents co-operate with the learned arbitrator for the proceedings to

commence and the aspect of interim reliefs, sought to be pressed on behalf of the applicant can be taken up at the earliest. In order to support the aforesaid contentions raised on behalf of the applicant, reference was made to documents filed alongwith the application.

3. This application was listed yesterday, when this Court *prima facie* found substance in the contentions raised on behalf of the applicant and in that light, learned counsel appearing for the respondents sought adjournment till today to take appropriate instructions in the matter.

4. Today, when the application was called out for hearing, respondent No.2 was present in person. The learned counsel for the respondents submitted that the respondent No.2 is suffering from a particular health condition due to which, he was unable to give appropriate instructions and to attend the matter before the learned arbitrator and this Court. It was submitted that the said respondent, on behalf of all the respondents, undertakes to abide by the directions that may be issued by this Court and further undertakes to co-operate with the learned arbitrator for the arbitral proceeding to commence and to be continued in an appropriate manner.

5. Perusal of the documents filed alongwith the application shows that in the present case, by order dated 23rd February, 2021, this Court appointed a sole arbitrator, who was Principal District and Session Judge. It came to light subsequently that the said sole arbitrator could not take up the assignment and therefore, a substitution application had to be filed before this Court.

6. On 30th June, 2022, this Court appointed Justice R. G. Ketkar, former Judge of this Court, as the sole arbitrator in substitution of the earlier sole

arbitrator. It was recorded that the venue of arbitration was left open for the arbitrator to determine and the fees of the learned arbitrator was recorded to be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.

7. Thereafter, the matter again came up before this Court on a *praecipe*, in the light of an e-mail issued by the learned arbitrator. It appears that in the proceeding before the learned arbitrator, the respondents kept on insisting that the arbitration proceeding ought to be conducted at Kalyan. On 11th November, 2022, this Court took note of the directions passed in the earlier order dated 30th June, 2022 and found that the insistence on the part of the respondents was not justified, particularly when it was left open for the learned arbitrator to decide upon the venue of the arbitral proceeding. The *praecipe* was disposed of by observing that the learned arbitrator would determine the venue of the arbitration proceeding and that would not affect the right of the parties on the aspect of seat of arbitration, specifically recorded in the arbitration clause contained in the development agreement executed between the parties.

8. It appears that even after the order dated 11th November, 2022 was passed by this Court, the arbitral proceedings could not commence. According to the applicant, this was due to non-co-operation on the part of the respondents and their continued insistence for conducting the arbitral proceeding at Kalyan. The respondents appear to be dissatisfied by the directions given by this Court of leaving the venue of arbitration to the discretion of the learned arbitrator.

9. It is in this backdrop that the present application came to be filed. The respondents have appeared through counsel and it is specifically submitted

that the respondents would take necessary steps to ensure co-operation with the learned arbitrator in the arbitral proceeding. It is submitted that due to the health condition of respondent No.2, who is actually looking after the proceedings, the respondents could not take necessary steps in the matter for the arbitral proceeding to commence.

10. The learned counsel for the applicant has made detailed submissions as to the manner in which, the respondents have been undertaking other legal proceedings, while at the same time, they have been stalling the arbitral proceeding.

11. Considering the undertaking given before this Court today by the respondents, this Court is not inclined to go into the allegations made against them. Suffice it to say that the respondents shall co-operate with the learned arbitrator in the arbitral proceeding. The applicant has already undertaken to do so.

12 In view of the above, the parties are directed to appear before the learned arbitrator on 16th May, 2023. The applicant as well as the respondents undertake to co-operate with the learned arbitrator on all aspects of the matter, including the deposit of fees. The proceedings are expected to be taken up on 16th May, 2023, by the learned arbitrator for fixing a schedule of meetings. This Court is assured that the parties shall co-operate with the learned arbitrator, so that the aspect of interim reliefs sought to be pressed on behalf of the applicant, can also be taken up expeditiously by the learned arbitrator.

13. This Court is further informed that the original record is with the erstwhile arbitrator. To facilitate expeditious proceeding before the learned arbitrator, the petitioner undertakes to approach the erstwhile arbitrator, with a request to handover the record, so that that the same can be handed over to the learned arbitrator taking up the arbitral proceeding. It is made clear that in the meanwhile, the parties would be at liberty to refer to and rely upon photocopies of the record before the learned arbitrator, so that the matter is taken up as expeditiously as possible.

14. The application is disposed of, in the light of the observations made hereinabove.

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(MANISH PITALE, J)

Priya Kambl