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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.149 OF 2023

Arfana Rafiq Jafrani & Anr.

...Petitioners

Versus

M/s. HRJ Construction & Ors.

...Respondents

Hitesh Vyas with Chandrashekhar Yadav and Shreyash Yadav for the
Petitioners.

Rekha Musale i/b. Nitin Rajguru for the Respondents.

CORAM : R.I. CHAGLA J

DATE : 9TH OCTOBER, 2023

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking appointment of Sole Arbitrator and refer all the disputes between the Petitioners and the Respondents for arbitration as per the Clause 27 of the Partnership Deed dated 31st October, 2015 and also Clause 8 of the Reconstitution Deed dated 8th January, 2018. Further, relief has been sought for stay of the Arbitration Proceeding initiated by the Advocate Mr. Sharad Suryawanshi at the behest of Respondent

herein.

2. The Affidavit in Reply has been filed by the Respondents dated 4th July, 2023, copy of which is tendered and taken on record. It appears from the Affidavit in Reply of the Respondents that a notice dated 9th May, 2023 has been issued by the Respondents invoking the arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 (“the Act”). Although, it is stated in paragraph 10 that on 24th May, 2023, the Respondents sent a letter to learned Arbitrator Advocate Sharad P. Suryawanshi informing of his appointment to resolve the dispute arising between partners of the Respondent No.1 – firm, there is annexed to the Petition at Exhibit E communication dated 17th March, 2023, where the Advocate Sharad P. Suryawanshi has been asked to act as Arbitrator as per the Agreement. It is surprising to note that this is prior to the notice invoking the arbitration being said notice dated 9th May, 2023 having been issued by the Respondents. This procedure is not contemplated by the Arbitration Act.

3. I find much merit in the contention of the Petitioners and the objection taken for the appointment of Advocate Mr. Sharad P.

Suryawanshi for resolving the dispute between the Petitioners and Respondents. The Petitioners have called upon by Advocate Mr. Sharad P. Suryawanshi for attending Arbitral Proceeding before him and that in the event the Petitioners do not attend, the Arbitral Proceeding will be conducted in their absence and award will be passed. Thus, I find there to be a genuine grievance of the Petitioners taken to the conducting of Arbitral Proceedings by Advocate Mr. Sharad P. Suryawanshi. Accordingly, it would be appropriate to appoint a retired Judge of this Court as Arbitrator under Section 11 of the Arbitration Act.

4. Liberty is also granted to the Petitioners for filing appropriate Application under Section 17 of the Arbitration Act before the Arbitrator appointed by this Order for seeking the relief sought for under Section 9 of the Arbitration Act. The appointed Arbitrator, upon the filing of such application is requested to expeditiously and in any event within a period of four weeks from the Application being filed dispose of the same. The Respondents shall till the disposal of the application not create third party interest in the constructed units.

5. There is a statement of the Advocate for the Respondent No.2 which has been recorded by the District Judge 2, Pune viz. that Respondent No.2 will not create third party interest in the disputed constructed units. The statement has been accepted by the District Judge 2, Pune in the order dated 16th June, 2023 in CMA No.369 of 2023 and CMA No.370 of 2023. This statement has thereafter been continued and shall continue till the hearing and final disposal of the application under Section 17 of the Act by the learned Arbitrator.

6. The relief sought for in the Arbitration Petition is granted as under:-

(i) Shri Justice Shrihari P. Davare (Retired High Court Judge) is appointed as a Sole Arbitrator to decide the disputes between the Petitioner and the Respondent as per Clause 27 of the Partnership Deed dated 31st October, 2015 and also Clause 8 of the Reconstitution Deed dated 8th January, 2018.

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

(iii) Office to inform the Sole Arbitrator regarding his

appointment.

(iv) The Sole Arbitrator is requested to file his 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.]