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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.150 OF 2023

Mr. Hasnain Rafiq Jafrani

...Petitioner

Versus

M/s. Hill Town Constructions & 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 seeks
appointment of Sole Arbitrator to adjudicate the disputes and
differences between the Petitioner and Respondents under the
Partnership Deed dated 23rd June, 2016.

2. An Affidavit in Reply has been filed by the Respondents
dated 4th July, 2023, copy of which is tendered and taken on record.

3. The Respondents in the said Reply have referred to certain communication addressed by the Respondents dated 20th February, 2023 to Mr. Ashok N. Dhanapune informing of his appointment for resolving the dispute arising between the partners of Respondent Firm. It is further stated in the said Affidavit in Reply that Mr. Ashok N. Dhanapune had accepted his appointment and sent notice to the partners of the Respondents on 23rd February, 2023 and started Arbitral Proceeding as per law.

4. It is the contention of the Respondents that Mr. Ashok N. Dhanapune has been appointed as arbitrator in view of resolution dated 11th November, 2021 by consent of parties.

5. The Petitioner has taken objection to the appointment of Mr. Ashok N. Dhanapue as Arbitrator. The Petitioner states that the parties cannot agree upon the appointment of Arbitrator in view of the Respondent Nos.2 to 4 having passed resolution expelling the Petitioner from Respondent No.1 partnership firm without any notice and opportunity of being heard.

6. The Petitioner has relied on Clause 14 of the Partnership

Deed dated 23rd June, 2016 which provides that, if any dispute or difference arises at any time between the parties or between a partner and the partnership firm in respect of business of Respondent No.1 and its assets and bank accounts, as to the construction, meaning or effect of, or as to any clause, matter or things contained therein or as to the rights or liabilities of the parties under the Partnership Deed, the same will be referred to arbitration under and in accordance with and subject to the provisions of the Arbitration Act.

7. The dispute is with regard to the alleged illegal expelling of the Petitioner as partner of the Respondent No.1 firm. The Petitioner in that context has invoked arbitration by arbitration notice dated 10th April, 2023 calling upon the Petitioner to consent under Section 21 of the Act, to the appointment of Arbitrator named therein failing which the Petitioner would seek recourse under Section 11 of the Act. In view of the Respondents not having responded to the notice invoking arbitration, the present Petition has been filed.

8. Having considered the averments in the Petition and submissions of learned Counsel for parties, I am of the view that the

arbitration dispute cannot be resolved by Mr. Ashok N. Dhanapune, who has been unilaterally appointed by the Respondent. Thus in these circumstances a retired Judge of this Court would be appropriate to act as an arbitrator to adjudicate the dispute and difference between Petitioners and Respondents. The Petitioner as aforementioned has invoked arbitration by issuing notice dated 10th April, 2023 under Clause 14 of the Partnership Deed dated 23rd June, 2016. There is an arbitration agreement provided in the said clause and in view of the dispute between the Petitioner and Respondents, concerning what is alleged by the Petitioner to be an illegal expelling of the Petitioner by the Respondent from the Respondent No.1 - Firm, the relief sought for in the Arbitration Petition requires to be granted.

9. 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 the Clause 14 of the Partnership Deed dated 23rd June, 2016.

(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.]