

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.172 OF 2022

Devji Harkha Bambaniya ... Petitioner
Vs.
Panorama Realty thr. Prop. Jojimon Philip Joseph ... Respondent

Mr. Viraj Kandpile for Petitioner.
Mr. Rajesh Thakur for Respondent.

CORAM : MANISH PITALE, J.

DATE : JANUARY 19, 2023

P.C. :

. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of the arbitrator in the context of an arbitration clause contained in an agreement for sale executed between the parties. As per clause 16 of the said agreement, disputes between the parties are to be resolved by referring the matter to a sole arbitrator, to be appointed with the mutual consent of the parties.

2. In view of the disputes arising between the parties, by notice dated 25.04.2022, the petitioner invoked the arbitration clause, seeking appointment of an arbitrator for resolution of disputes. By reply dated 09.06.2022 sent through advocate, the respondent stated that there was no question of referring the dispute for arbitration in view of the fact that the booking of the subject *gala* itself stood cancelled.

3. In this backdrop, the present petition came to be filed wherein the respondent has appeared through counsel.

4. Learned counsel for the petitioner relied upon the arbitration clause, the invocation thereof and the failure of the procedure agreed between the parties for appointment of the arbitrator. On this basis, he

submitted that this Court ought to exercise jurisdiction under Section 11(6) of the said Act for appointment of the arbitrator.

5. On the other hand, learned counsel for the respondent submitted that a copy of the agreement placed on record shows that although it was signed by the respondent, the signature of the petitioner is absent, thereby indicating that there is, in fact, no arbitration agreement between the parties. On this basis, it was submitted that the petition deserves to be dismissed.

6. To counter the aforesaid submission, learned counsel for the petitioner invited attention of this Court to the pages 32 to 37 of the petition wherein copies of payment receipts issued by the respondent have been placed on record. It is significant that the aforesaid payment receipts specifically referred to Gala No.13 in respect of which the agreement for sale was said to have been executed between the parties.

7. It is significant that in response to the notice invoking the arbitration clause sent on behalf of the petitioner, in the reply dated 09.06.2022 sent on behalf of the respondent, the said stand as regards absence of signature of the petitioner on the agreement in question and hence there being no arbitration agreement between the parties, was not raised and that the reference to arbitration was denied solely on the ground that the booking of the *gala* in question was already cancelled. Looking to the response of the respondent to the notice invoking arbitration and in view of the documents placed on record, this Court is of the opinion that there is no substance in the contention raised on behalf of the respondent about absence of an arbitration agreement between the parties. Therefore, the said contention is rejected.

8. In the light of the arbitration clause, disputes having arisen between the parties and invocation of the arbitration clause on the part

of the petitioner, this Court is of the opinion that the present petition can be allowed.

9. Since the agreement between the parties was executed at Thane, and the subject property is also located at Thane, it would be appropriate that the an arbitrator available at Thane is appointed as the sole arbitrator.

10. Accordingly, Ms. Rupali S. Akolkar, Advocate available at Thane is appointed as the sole arbitrator for resolving the dispute between the parties. The details of the learned arbitrator are as follows:-

Advocate Rupali S. Akolkar

B-1407, Lotus Gawand Baug,
Near Upvan Lake, Pokhran Road No.2,
Thane (West). Mob. 98924 95581
Email: adv.rsakolkar@gmail.com

11. The parties undertake to inform the learned Arbitrator about the order passed today.

12. Learned Arbitrator is requested to submit her consent and disclosure statement in terms of Sections 11(8) read with 12(1) of the aforesaid Act within four weeks to the Registrar (Judicial) of this Court.

13. The fees of the learned Arbitrator shall be fixed in terms of the Fourth Schedule to the aforesaid Act.

14. All questions are kept open.

15. Petition stands disposed of.

(MANISH PITALE, J.)