

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 55 OF 2022**

Cosmos Builders	...	Petitioner
vs.		
Arjun Sitaram Nitinvar	...	Respondent

Mr. Jayesh Madhav Joshi for petitioner.

Mr. Abhishek Tembe for respondent.

CORAM : MANISH PITALE, J

DATE : 5th JANUARY, 2023

P.C. :

. By this petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, the petitioner is seeking appointment of arbitrator for resolution of disputes between the parties.

2. The petitioner relies upon the arbitration clause contained in the Deed of Assignment of development executed between the parties, which reads as follows:

‘31. If there arises any dispute or difference between the parties hereto relating to or arising from any of the terms and conditions hereof, including the interpretation of any of the terms and conditions hereof, the same shall be referred to the arbitration of one arbitrator to be mutually agreed between the parties hereto failing which the parties will appoint their respective Arbitrators in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The place of the arbitrator shall be at Thane and shall be subject to the jurisdiction of the Thane Court.’

3. It is the case of the petitioner that since disputes arose between the parties, the petitioner was constrained to invoke the arbitration clause. The

invocation notice was dated 23rd November, 2020. In the said notice, the petitioner had proposed the name of an arbitrator. But, there was no response from the respondent. In this backdrop, the present petition came to be filed.

4. The respondent has appeared through counsel and filed reply affidavit. One of the objections raised on behalf of the respondent is that the partnership firm is not registered and therefore, the bar of Section 69 of the Partnership Act would come into play. It was further alleged that there was nothing to demonstrate that the person, who has filed the present petition, is indeed a partner of the firm and there are certain allegations made as against breach of clauses of the agreement, on the part of the petitioner.

5. This Court has considered the said objections. As regards the first objection pertaining to the petition being not maintainable, for the reason that the partnership firm is not registered, suffice it to say that such ground is not available in the light of the law laid down by the Supreme Court in the case of *Umesh Goel v/s. Himachal Pradesh Cooperative Group Housing Society Limited*, [(2016) 11 SCC 313].

6. As regards the allegation that there is lack of material to show that the person, who has filed the present petition, is indeed a partner of the firm, the said question can be adjudicated before the learned arbitrator, for the reason that this Court intends to keep all questions open for the learned arbitrator for resolution.

7. There is no dispute about the fact that there is indeed an arbitration clause in the document in question and the petitioner had invoked the said clause, but the same did not lead to appointment of arbitrator, as per the

agreed procedure. Therefore, this Court can certainly exercise jurisdiction under Section 11(6) of the said Act.

8. The arbitration clause specifically states that the place of arbitration shall be Thane. Therefore, this Court proceeds for appointment of arbitrator, who is available at Thane.

9. Accordingly, Mr. Sadashiv S. Deshmukh, Retired District Judge is appointed as sole arbitrator. Details of the learned arbitrator are as follows:-

403, Jupiter, Building No.9,
(Gavanndbaugh), Pokhran Road 2,
Thane (West) – 400 610.
Mob.: 9820 553 525

10. The petitioner undertakes to inform the learned arbitrator about the order passed today.

11. The learned arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be in terms of Fourth Schedule of the said Act.

12. All questions are left open to be decided by the learned arbitrator.

13. Petition stands disposed of in above terms.

(MANISH PITALE, J)

Priya Kambli