

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 12 OF 2022

M/s. Rachana Construction ...Petitioner
Vs.
M/s. Goel Eisha Developers & Ors. ...Respondents

Mr. Aniesh Jadhav a/w. Mr. Rushikesh S. Kekane i/b. Mr.
Rajendra Jagtap, for the Petitioner.
Mr. Pankaj Das, for the Respondent No.1.

CORAM : MANISH PITALE, J.
DATE : 4 JANUARY 2023

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. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in view of the disputes that have arisen between the parties.

2. The parties executed an agreement for civil construction and development works which contained an arbitration clause at Article 8, which reads as follows:

Article 8 – Arbitration : All matters of dispute or difference as to the quality of material used by the contractors or work done or in respect of delay in completion of said works, workmanship or in respect of payment of extra work, required to be done and so

executed or in respect of measurement of work done or in respect of delay of payment to the contractors or touching the interpretation, fulfilment of any of the terms of these presents or any other matter arising out of or in connection with these presents or the carrying out of the work, or other document attached hereto will be referred to the Principal Architect / Planedge Consultants / the Arbitrator as mentioned in the Tender, and their decision shall be final and binding on both parties and may be made a Rule of Court.

3. In this petition, notice was issued to the respondents. Respondent Nos.1 and 3 were served but the respondent No.2 remained unserved.

4. Learned counsel has appeared on behalf of respondent No.1 i.e. partnership firm and he points out that in reply to the notice issued by the petitioner, it was stated that respondent Nos.2 and 3 had retired from the said firm and that it was reconstituted.

5. In this light, the learned counsel for the petitioner seeks permission to delete respondent Nos.2 and 3 from the array of parties. Permission is granted at the risk of the petitioner. Amendment be carried out forthwith.

6. The learned counsel appearing for the respondent No.1 has raised an objection pertaining to limitation contending that the first notice invoking arbitration was issued as far back as on 26/12/2015.

7. The learned counsel for the petitioner submitted in this regard that subsequent to the said notice, certain amount was received by the petitioner during the course of attempts for settlement of the disputes. This Court while exercising jurisdiction under Section 11 of the said Act will not comment upon the contentions pertaining to the question of limitation, as the same can be left open to be decided by the arbitrator.

8. It is found that there is indeed aforementioned arbitration clause in the agreement executed between the parties. Disputes have indeed arisen between them and the petitioner did invoke the arbitration clause. The last notice in that regard was issued on 21/9/2021. Since the procedure agreed upon between the parties for appointment of arbitrator did not lead to such appointment, this Court can exercise jurisdiction under Section 11(6) of the said Act.

9. In view of the above, the petition is allowed. Since the agreement was executed at Pune, it would be appropriate that an arbitrator available at Pune is appointed for resolving the disputes between the parties. Accordingly, Smt. Dr. Justice Shalini

Phansalkar-Joshi is appointed as the sole arbitrator for resolving the disputes between the petitioner and the respondent firm.

10. The details of the sole arbitrator are as follows:

Smt. Dr. Justice Shalini Phansalkar-Joshi
Bungalow No.12, Bhagya Chintamani Nagar,
Poud Road, Kothrud, Pune – 411 038.
Mobile : 9657188676
Email : phansalkarjoshi@gmail.com

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

12. The learned arbitrator shall communicate her consent and disclosure statement as per Section 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 as per schedule IV to the said Act.

12. All questions, including the question of limitation, are kept open to be decided by the learned arbitrator.

13. The petition stands disposed of, in the aforesaid terms.

MANISH PITALE, J.