

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.3 OF 2023

Rekha Agarwal & Anr.	]	..	Applicants
vs.			
Akash Agarwal & Ors.	]	..	Respondents

Mr.Ajit Anekar a/w Ms.Madhuri Rawat i/b Auris Legal for Applicants.
Mr.Sameer Bindra a/w Shreya Mohapatra i/b Khaitan & Co. for Respondent.

CORAM : BHARATI DANGRE, J

DATE : 4th JANUARY, 2023.

P.C.

Not on Board. Upon mentioning taken on Board and heard alongwith CARAP No.184-2022.

1] The Arbitration Application filed under Section 11 read with Section 15 of the Arbitration and Conciliation Act, 1996, seek appointment of an Arbitrator to substitute the erstwhile Sole Arbitrator, who came to be appointed under the order of this court passed on 21.08.2017.

2] It is not disputed that the arbitration proceedings commenced subsequent to the said appointment and have advanced to the stage of recording evidence of Respondents. However, on account of elevation of the erstwhile Sole Arbitrator, the parties face a difficulty.

3] I need not look into existence of arbitration clause, since considering that there exists a valid arbitration clause in the Partnership Deed, this Court had already exercised its power and appointed an Arbitrator.

4] Having heard the learned counsel for the parties, it is apparent that the arbitral proceedings have progressed and now reached at the stage of recording evidence of Respondents.

In these circumstances, parties are perfectly justified in seeking appointment of a Sole Arbitrator to replace the erstwhile arbitrator in order to conclude the arbitration proceedings from the stage where they had already reached.

5] In the wake of above, I deem it appropriate to appoint Mr.Abhishek Bhadang, Advocate of this Court to act as an Arbitrator in place of the erstwhile sole Arbitrator, who was appointed under the order of this Court dated 21.08.2017.

He shall take the arbitration proceedings ahead from the stage where they are lying stand-still.

Hence, the following order :-

ORDER

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Abhishek Bhadang, is hereby appointed as a Sole Arbitrator for adjudication of the pending arbitration proceedings between the parties.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned

Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 23/01/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The Sole Arbitrator shall be entitled for the fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All the rights and contentions of the parties are kept open.

Arbitration Application is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]