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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.9 OF 2023

Loladiiya Universal & Ors.] .. Applicants

vs.

Chandrakant Jadavji Rajpariya] .. Respondent

Mr.Shrey Fatterpekar a/w Ameet Mehta, Nirav Marjadi, Vinay Shingada
and Nikita Deora i/b M/s. Solicis Lex for the Applicants.

Mr.Amar Mishra i/b SRM Law Associates for the Respondent.

CORAM : BHARATI DANGRE, J

DATE : 1st August, 2023.

P.C.

1] The Applicant who has approached this Court, is a Partnership firm *interalia* engaged in the business of developing and constructing property, whereas, the Respondent is owner of the piece and parcel of land situated in Village Waksai, Taluka Maval, District Pune.

2] A Memorandum of Understanding was executed between them on 04.11.2021 wherein pursuant to the discussions and negotiations, it was agreed that the Applicant shall develop the property belonging to the Respondent and the Respondent agreed to grant development rights to the Applicant in consideration of payment of Rs.45,00,000/- plus two bungalows considering consumption of 28.57 % FSI, out of the 7 bungalows to be constructed on the land.

The MOU specifically recorded that Rs.5 Lakh is deposited prior to execution of MOU, whereas Rs.40,00,000.- shall be deposited at the time of registration of Development Agreement.

This MOU, however, could not take shape of the Development Agreement and it is not in dispute that the Respondent has returned the amount of Rs.5 Lakh to the Developer.

3] The Applicant, however, addressed a communication to the Respondent dated 24.12.2021, seeking specific performance of the MOU, as he had taken steps in its furtherance by appointing an Architect and had incurred his fees. At the end of the Applicant, the plans were finalized.

By another communication dated 24.01.2022, arbitration was also invoked.

4] The learned counsel representing the Respondent would submit that since the amount of Rs.5 Lakh is already paid, there is no dispute which would survive, for the same to be taken to Arbitration.

Though the learned counsel do not dispute existence of the arbitration clause, his submission is, it is an attempt in vein as no dispute exist as on today.

I do not agree with the said submission, since the claim of the Applicant is for specific performance of the terms and conditions of the MOU and ultimately whether he would be entitled for the specific performance is a matter to be determined at the time of arbitral proceedings. But at this stage, the reference cannot be refused, since it is not the case that it is non arbitral dispute, but the case of Respondent is, there is no dispute.

5] In any case, in the wake of existence of the arbitration clause in the understanding between the parties. as well as since the arbitration has been invoked, I do not see as to how the relief can be denied .

In the wake of above, since the parties have expressed consensus for the name of Sole Arbitrator, following order is passed :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Mr.Atharva Dandekar, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The 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 Arbitrator shall fix up a first date of hearing in the week commencing from 14/08/2023. 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 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 Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 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 Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

Arbitration Application stands disposed off in the aforesaid terms.

[BHARATI DANGRE, J]