

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Misc Civil Application NO.103/2023

and

Misc Civil Application NO.104/2023

(Pyramid Realtor's V Divya Builders and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. M.R. Joharapurkar, Adv for applicant.

Mr. Chetan Dhore, Adv for non-applicant nos. 1 to 4.

CORAM : AVINASH G GHAROTE, J.

DATE : 03-03-2023

Heard learned Counsel for the applicant.

2. The appointment of the named arbitrator Mr. Sitaraman Iyer has been held to be invalid in view of Section 12(5) read with VIIth Schedule of the Arbitration and Conciliation Act, 1996. This application has therefore been filed for appointment of a new arbitrator, in his place.

3. In view of the objection by Mr. Dhore, learned Counsel for the non applicants, that the documents in question namely; (1) the agreement of settlement of MOU dated 13-07-2017 (pg 34), the additional/supplementary *agreement dated 13-07-2017 (pg 39)*, (3) *MOU dated 13-07-2017 (pg 46)* in Misc. Civil Application No.103/2023 and (4) *MOU dated 16-01-2018* are not properly stamped to get the same

adjudicated u/s 31 of the Maharashtra Stamp Act, 1958, and to pay the stamp duty assessed thereupon, the learned Counsel for the applicant on instructions undertakes to file the application for adjudication on 08-03-2023 and to pay the stamp duty adjudicated thereupon as and when adjudicated.

4. Since the agreements at Sr. Nos. 1 to 3 contain an arbitration clause, and the subsequent MOU dated 16-01-2018 (pg 63) in Misc Civil Application No. 103/2023 and (Pg 77) in Misc Civil Application No.104/2023 is not signed by the non-applicant, the cancellation as envisaged therein is not clearly binding upon them. In view of this, the learned counsel for the respective parties are agreeable for appointment of sole arbitrator in both the matters, considering which, Shri Justice B.P. Dharmadhikari, former Chief Justice of this Court, is hereby appointed as Arbitrator to resolve the dispute in both the matters. The parties shall appear before the learned arbitrator on 09-03-2023.

5. The processing charges shall be paid before 09-03-2023.

6. The erstwhile arbitrator Mr Iyyer is directed to send the record and proceedings to the newly appointed Arbitrator.

7. It is made clear that all the contentions as raised by the non-applicants in their submissions/replies/suits are kept open and can be agitated before the learned Arbitrator.

JUDGE

Deshmukh