

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

MISC. CIVIL APPLICATION NO. 670 OF 2022

Dattatray Advertising Company__ Vs. __Municipal Corporation of City of Nagpur
and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.K.Mishra, Senior Advocate assisted by Mr. Adarsh Dubey, Advocate for applicant
Mr. Abhay Sambre, Advocate for non-applicant Nos. 1 & 2

CORAM : AVINASH G. GHAROTE, J.
DATE : 24/02/2023

1] By the order dated 14.10.2022, the following position was noted.

“The agreement dated 30/5/2005, was for the period of 15 years which has been extended from time to time as per the communication dt 23/10/2018 (page 25) and 24/08/2020 (page 26), which extension was still in force on 29/05/2021. The respondent by the communication dt. 01/7/2022 (page 27) has demanded escalation of the price, for erecting the advertisement hoardings which has been denied by the applicant and by the notice dated 19/08/2022 (page 43), the arbitration clause has been invoked, the receipt of which is apparent from the reply of the non-applicant dated 03/10/2022 (page 49).

Issue notice for final disposal, returnable on 18/11/2022.

Hamdast granted.”

2] Mr. Abhay Sambre, learned counsel for the non-applicants submits that the agreement dated 30.5.2005 (pg.11) did not contain any escalation clause,

though such clause was existing in the tender document, and the claim made in the notice dated 19.8.2022 (pg.43) invoking the arbitration clause is for escalation and therefore, is a claim which is beyond the terms of the agreement dated 30.5.2005.

3] Mr. Mishra, learned senior counsel in this context rightly points out to clause 30.4 of the agreement dated 30.5.2005, which makes the tender document as a part of the agreement dated 30.5.2005, considering which, the above objection cannot be sustained, in view of which since a dispute exist, there is a requirement for appointment of arbitrator.

4] Both the learned counsels appearing for the parties, upon instructions, are agreeable to appoint a sole arbitrator, considering which Mr. B.PDharmadhikari, Former Chief Justice of this Court is appointed as a sole arbitrator to arbitrate the dispute between the parties hereto.

5] The parties shall appear before the learned Arbitrator on 6.3.2023. The processing charges be deposited in this Court before the said date.

6] The application is allowed in above terms.
No costs.