



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.144 OF 2021

Mr. Pandharinath Laxman Waringe

...Petitioner

Versus

Mr. Santosh Patel

...Respondent

Ms. Priya Gajare, *for the Petitioner.*

CORAM Dr. Neela Gokhale, J.

DATED: 8th January 2024

PC:-

1. The petition seeks appointment of a sole arbitrator to adjudicate the differences and disputes that have arisen between the parties in respect of partnership agreement dated 1st September 2009 executed by and between the parties. Partnership firm is engaged in the business of construction and development of real estate and both the partners have equal profit and loss share in the business.

2. Clause 18 of the partnership agreement contains an arbitration clause, which reads thus:

“All the disputes, differences and questions whatsoever which shall either during the partnership or afterwards arise between the partners or their respective

representatives touching the presents or things herein contained or any account or assets debts or liabilities to be made hereunder or as to any act, deed or omission of any partner or as to the matter in any way relating to the partnership business or the affairs thereof or the rights, duties or liabilities of any person under these presents shall be referred to arbitration in accordance with and subject to the Indian Arbitration Act, 1949.”

3. Since the disputes have arisen between the parties, the Petitioner had invoked the arbitration clause by issuing a notice dated 24th August 2021 through his lawyer to the Respondent calling upon him to give consent for appointment of an arbitrator. There is no reply to the said notice by the Respondent.

4. Order dated 17th January 2023 records that one Mr. R. D. Suryawanshi, learned counsel stated that he had instructions to appear for Respondent and hence service of notice was dispensed with. Two weeks time was granted to the Respondent to file his reply affidavit. Despite several opportunities, the Respondent has failed to either appear before the Court or file his reply. By order dated 10th February 2023, the Respondent was given a final opportunity to put in his appearance and file his reply. It was made clear that no further time would be granted beyond the period of two weeks to the Respondent to file his reply. The matter was thereafter listed for final disposal. Even after the said order, the Respondent had neither appeared nor filed the reply.

5. In view of this, the matter was taken up for hearing *ex parte*.

6. Heard the learned counsel for the Petitioner. Perused the documents on record.
7. In view of the same, the following order is passed.

ORDER

1. Shri P. G. Hartalkar, Retired Judge, Small Causes Court, Mumbai is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties out of the Partnership Agreement dated 1st September 2009. The seat of the arbitration shall be Thane.
2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.
3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.
4. All contentions of the parties on merits of the disputes are expressly left open.

5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
6. The Petition is disposed of in the above terms. There will be no order as to costs.
7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

**“Shri. P. G. Hartalkar,
Retired Judge, Small Causes Court, Mumbai,
105, Bhiwandiwalla Building,
2nd Floor, Court Naka, Above Axis Bank,
Thane (West) – 400 601.
Mobile No. 9869005671
Email ID: prakashhartalkar@yahoo.com”**

(Dr. Neela Gokhale, J)