

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.192 OF 2022

Muddassir Abdul Gaffar Pansare & .. Petitioners
Ors.

Versus

M/s. Pansare Builders through .. Respondents
Aslam Dawood Pansare & Ors.

...

Mr.Rohit D. Joshi for the Petitioners.

Mr.Abhishek Patil for the Respondents.

...

CORAM: BHARATI DANGRE, J.
DATED : 10th JANUARY, 2024

P.C:-

1. The Petitioners, being the joint owners of the property situated at Mahad, District Raigad, entered into a Development Agreement with the Respondent on 22/07/2016, permitting him to develop the property as per the sanction plan of the Mahad Municipal Council. Under the said Agreement, Respondent No.1 agreed to provide a residential flat admeasuring 1662 sq.ft. to the predecessor of the Petitioners alongwith commercial shop admeasuring 200 sq.ft. i.e. total area of 1862 sq.ft.

While the construction was commenced by Respondent No.1, the Petitioners noticed that it is not in accordance with

sanction plan and there was no provision for the shop premises admeasuring 200 sq.ft., which was agreed as per the Agreement and on noticing that Respondent No.1 was in breach of the Agreement, arbitration is invoked by addressing a notice to the Respondent No.1 on 29/06/2019.

Admittedly, there is no response at the end of the Respondent/Developer. Pertinent to note that the Petitioners have also filed a Misc.Civil Application No.30 of 2018 in District Court Raigad at Mangaon and by order dated 13/07/2018, Adhoc District Judge-1, Mangaon-Raigad, had directed maintenance of status-quo in respect of further construction of the property.

2. The above facts are not disputed by the learned counsel for the Respondents and the only objection raised by him is as regards the jurisdiction of this Court and in terms of Section 42 of the Arbitration and Conciliation Act, 1996, it is his specific submission that since the Misc. Civil Application is filed before the District Court Raigad at Mangaon, only that Court can exercise the power to appoint an Arbitrator.

The above argument is completely misconceived, as perusal of Section 11 contained in Chapter III of the Arbitration and Conciliation Act, 1996 would clearly reveal that it is only the Supreme Court and the High Court, which shall exercise the power to designate the arbitral institution and the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution. It is thus the prerogative of

the Chief Justice of a High Court to exercise the power under Section 11 and as such, the objection is completely baseless and deserve a rejection.

3. Since the existence of the arbitration agreement between the parties is not in dispute and similarly its invocation by the Petitioner on 29/06/2019 and, since, the Respondents have failed to respond to the said notice within a period of 30 days as stipulated in sub-section (5) of Section 11, a case is made out for appointment of an Arbitrator.

Hence, in order to resolve the dispute arisen between the parties, Mr.Sarthak Diwan, an Advocate of this Court, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the document referred to above.

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 29/01/2024. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

The sole Arbitrator shall be entitled to the fees prescribed under 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.

Needless to state that all the contentions of both the sides are left open, to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

4. Arbitration Application No.192 of 2022 stands disposed off the aforestated terms.

(SMT. BHARATI DANGRE, J.)