

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**ARBITRATION PETITION NO. 8 OF 2020**

Manav Promoters Private Limited .. Petitioner  
Versus  
Maharia Charitable Trust .. Respondent  
...

Mr. Nachiket V. Khaladkar for the petitioner.  
Mr. Arun Jain i/b Kartik Vig for respondent.

**CORAM: BHARATI DANGRE, J.**  
**DATED : 5<sup>th</sup> FEBRUARY, 2024**

**P.C:-**

1 By order dated 11/3/2014, Architect Chaitanya Peshwe was appointed as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties out of the work contract which contained an arbitration clause.

The order noted that the clause contemplate that all disputes and differences of any kind arising out of the contract shall be referred to, and settled by the Architect, who shall state his decision in writing, and if the owner or the contractor is dissatisfied with the decision of the Architect on any matter in question or dispute of any kind, either party may within 28 days of receipt of written notice of such decision, require reference of such disputes to arbitration.

Considering the objection advanced on behalf of the respondent that the disputes which are raised by the petitioner in the notice dated 2/11/2022 have not been referred to the Architect for his decision, it was categorically held that the petitioner's notice does indicate that the decision of the Architect on final bill raised by the petitioner was not acceptable to the petitioner, and therefore, the disputes have arisen between the parties, which need to be referred to arbitration in accordance with the clause 35.

The question whether the disputes are within the ambit of the arbitration clause, was a matter left to the decision of the Arbitrator.

The Arbitrator entered the reference, but on 18/3/2018, expressed his inability in continuing the arbitration proceedings, on account of difficulty faced by him on family front.

Immediately thereafter, on 28/5/2018, a communication was addressed suggesting the name of four proposed Arbitrators and requesting the respondent to chose either of them to be nominated as a Sole Arbitrator to take the arbitration proceedings further.

Admittedly, there is no response to the said communication.

2           The present petition is filed on 26/11/2019, though captioned under Section 11 of the Arbitration and Conciliation Act, 1996, but in fact, making a request for substitution of the Arbitrator appointed by this Court and necessarily u/s.11 r/w Section 15 of the Arbitration and Conciliation Act.

3           The learned counsel for the respondent make an attempt to raise a similar objection which was raised, when the arbitrator was appointed and in my considered opinion, it do not deserve any consideration, as what is sought is the substitution of the Arbitrator who has recused himself from continuing with the proceedings.

          However, the learned counsel for the respondent agree as to the name at Sr. No.1 indicated in the notice dated 28/5/2018 and in the wake thereof, the arbitration proceedings which are already in progress, but were discontinued since the erstwhile arbitrator expressed his inability, shall now be continued by Architect Vidyasagar S. Jadhav with the following address.

Flat No.1 Mohar Apartment,  
Anandniketan Society, S.No.22/1A,  
Plot No.2, Karvenagar, Pune 411052.  
Cell : 9822410041/9850950244

          The counsel for the petitioner shall intimate the arbitrator about his appointment, who shall assign a date for first meeting not less than four weeks from the first meeting on which he received the communication.

The Arbitrator shall, within a period of 15 days before entering the arbitration reference forward a statement of disclosure as contemplated u/s.11(8) r/w Section 12 of the Arbitration and Conciliation Act, 1996, to the Registrar Judicial-1 of this Court to be placed on record.

The Arbitrator, shall after entering the reference fix the date of first hearing and issue further directions as are necessary.

The Sole Arbitrator shall be entitled for the fees as per 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.

All rights and contentions of the parties are kept open.

**( SMT. BHARATI DANGRE, J.)**