

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3604 OF 2024

Rahul Bhaskar Mhaske And Anr	...Petitioners
Versus	
M/s. Gandhi And Associates Through Its Partners Navneet U. Gandhi, Amit N. Gandhi	...Respondent

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Mr. Rahul B. Mhaske, Petitioner-in-person.

Mr. J.P. Patil, A.G.P. for the Respondent – State.

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CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	10th JULY, 2024

P.C.:

1. Heard Mr. Mhaske, petitioner, party in person. The petition questions the order on an Application under Section 16 of the Arbitration and Conciliation Act, 1996, (the Arbitration Act) dated 04.01.2024, whereby the learned Arbitrator, has rejected the Objection to jurisdiction raised by the Petitioner.

2. The basic grievance is that the issue of limitation, which according to the petitioner, goes to the jurisdiction has not been decided; the petitioner is the owner of the immovable

property, which is registered under the Maharashtra Ownership Flats & Apartment Act, 1963 (MOFA), on account of it been a special statute eviction cannot be permitted and therefore the disputes becomes non arbitrable for which he placed reliance on the Judgment of the Hon'ble Supreme Court in ***Vidya Drolia & Ors. Vs. Durga Trading Corporation***¹. It is further contended, that relief of creating a charge which is claimed in the statement of claim is also beyond the jurisdiction of the arbitrator, on which counts, the application ought to have been allowed.

3. Insofar as the plea of statutory protection is concerned the argument that the petitioner cannot be evicted being the owner of the property which is registered under MOFA, it is necessary to note, that MOFA does not grant any statutory protection from eviction as is the case under the Rent Control Legislation. The ratio in ***Vidya Drolia (supra)***, regarding the protection to the tenant is on account of the protection granted under the Rent Control Legislation and therefore cannot be applied to the case of the petitioner. Similar would be the position in respect of the plea which is been raised that the provisions of

1 2019 SCC Onlice SC 358

the transfer of property Act would be applicable to the agreement in favour of the petitioner. In that view of the matter, the contentions is without any merits.

4. The plea of limitation is a plea, which has to be decided by the Arbitrator, on the basis of the evidence which would be laid before him and cannot form the subject matter of a plea under Section 16 of the Arbitration Act.

5. The further contention, that the charge is sought to be created upon the property of the owner, which is not permissible, is also dependent upon decision regarding the main relief sought and which may or may not be granted to the claimant in the proceedings and cannot be a subject matter of plea under Section 16 of the Arbitration Act. According to me the invocation of writ jurisdiction, is prohibited in arbitration and conciliation matters, unless it is shown that the impugned order is perverse.

6. I have perused the impugned order and considered the pleas raised by the petitioner against the same and do not find that its satisfies the requirement of law in that regard. I therefore do not see any reason to interfere.

7. Needless to say that these pleas can be raised by the petitioner in proceedings under Section 34 of the Arbitration Act, in case it is so permissible in law.

8. The petition is dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)