

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 144 OF 2024

Vijaynath Salikram Tiwari

...Petitioner

Vs.

M/s. S. B. Divya Developers & Ors.

...Respondents

Mr. Gaurav Jangle a/w Nirmal Chopda and Dhvani Bagdai i/by Vraj Legal for the Petitioner.

Mr. Ashutosh M. Dube a/w Kavita Dube, Prerna Bhatia, Saroj Sharma and Vandana Mishra for Respondent No.8.

Mr. Kashyap Bhalerao for Respondent No.9.

CORAM : ARIF S. DOCTOR, J.

DATE : 13TH NOVEMBER, 2024

P.C.:-

1. At the outset an objection is raised by Learned Counsel for Respondent No.9 that Respondent No.9 is not a party to the Arbitration Agreement and thus the name of Respondent No.9 be dropped from the array of the parties.

2. Learned Counsel for the Petitioner fairly submits that Respondent No.9 is not a signatory or party to the Arbitration Agreement, but is the Developer appointed by the partnership firm and has thus joined as a party. He

however concedes that Respondent No.9 not being a party to the Partnership Deed pursuant to which arbitration is invoked, shall be deleted from the array of the Respondents with liberty to the Petitioner to move an appropriate application before the Tribunal seeking to implead Respondent No.9, which application, if filed, shall be heard and considered on its own merits.

3. He then submits that the disputes and differences between the parties have arisen out of a Deed of Partnership dated 19th August, 2015 which he points out contains an arbitration clause being clause 27. He invites my attention to the notice invoking arbitration cum dissolution dated 29th November, 2023 which is addressed to the Respondents. He fairly submits that the Respondents vide their letter dated 21st December, 2023 had responded to the said notice invoking arbitration cum dissolution, by which, the Respondents have disputed the dissolution. There is however no dispute or denial to the existence of the partnership agreement or the fact that the same contains an arbitration clause.

4. The Respondents though served, have not appeared except Respondent Nos.8 and 9. Affidavit-in-Reply of Respondent No.8 also proceeds on the basis of denial of the allegations made against Respondent No.8, but does not dispute the existence of the Partnership Deed. Given this and the very settled law, I am prima facie satisfied that there exists an Arbitration Agreement between the parties which has been validly invoked. Hence, I find sufficient cause to appoint

an Arbitrator has been made out. I therefore allow the Petition in terms of prayer clause (a) which reads thus:-

“(a) This Hon’ble Court be pleased to appoint an Arbitrator as a Sole Arbitrator to adjudicate the disputes between the parties under Section 11 of the Arbitration & Conciliation Act, 1996 in terms of arbitration clause No.27 set out in the Deed of Partnership dated 19/08/2015;”

5. Hence, I appoint Mr. Jamshed B. Lentin, Advocate of this Court as a Sole Arbitrator to decide the disputes and differences between the parties on the following terms:-

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator: Mr. Jamshed B. Lentin, Advocate is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(b) Communication to Arbitrator of this order:

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Petitioner within one week from the date this order is uploaded.

(ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Mr. Jamshed B. Lentin.

Address 15, Examiner press Bldg., 2nd
Floor, 35, Dalal Street,
Mumbai 400 023.

Mobile 9820090098

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioner will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such

manner and within such time as the learned Sole Arbitrator deems fit.

- (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
 - (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
 - (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
 - (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
 - (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
6. All rights and contentions of the parties are kept expressly open.
7. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)