

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION APPLICATION NO.43 OF 2022

Madhurkumar Ramkrishnaji Bajaj & Anr.] .. Applicants

vs.

Sushma Shivkumar Daga & Ors.] .. Respondents

WITH

COMMERCIAL ARBITRATION PETITION NO.156 OF 2022

Madhurkar Ramkrishnaji Bajaj & Anr.] .. Petitioners

vs.

Sushma Shivkumar Daga & Ors.] .. Respondents

WITH

COMMERCIAL ARBITRATION PETITION (L) NO.2293 OF 2024

Sushma Shivkumar Daga & Anr.] .. Petitioners

vs.

Madhurkumar Ramkrishnaji Bajaj] .. Respondent

Mr.Virag Tulzapurkar a/w Mayur Khandeparkar, shriraj Dhruv, Swati Sutar and Keya Raval i/b Dhru & Co. for Applicants in CARAP No.43/2022.

Mr.Devansh Mohta a/w Kiran Mohite, Ishita Shah and Sudip Mallick i/b Kiran Mohite for the Petitioners in CARBPL No.2293/2024 and for Respondent Nos.1 and 2 in CARAP No.43/2022.

Mr.Digant Bhatt i/b Rajani Associates for Respondent No.3.

CORAM : BHARATI DANGRE, J

DATE : 22nd February, 2024.

P.C.

1] For the completeness of pleadings, all the Affidavits/rejoinders, tendered by respective counsel, representing the parties are taken on record.

2] Three proceedings are listed before me the first being CARAP No.43/2022, filed by Madhurkumar Ramkrishnaji Bajaj & Anr. Madhurkumar Bajaj against Sushma Daga and Ors.

The same party has also filed CARBP No.156/2022 seeking certain interim measures pending the hearing and disposal of arbitration proceedings. The third proceedings in form of CARBPL No.2293/2024 is instituted by Sushma Daga against Madhurkumar Bajaj.

3] I have heard the learned senior counsel Mr.Virag Tulzapurkar for the Applicant, in the Application under Section 11 and Petition under Section 9, as well as the learned counsel Mr.Mohta, representing Petitioners Sushma Daga and Chandrashekhar Daga, in CARBPL No.2293/2024.

4] In the wake of interconnection between the proceedings and by referring to the earlier round of litigations, where in the Suit filed by Sushma Daga and another, it has been categorically held that, in the wake of the agreement between the parties, the disputes can be

resolved through the mechanism of arbitration and since this position has been upheld up to the level of the Apex Court, the respective counsel are at consensus that the disputes that have arisen between the parties shall be made over to the Arbitrator.

Though the respective parties have filed distinct Section 9 Petitions, it is also agreed that the Petitions shall be treated as Applications under Section 17 before the Arbitrator to be appointed by this Court and the Arbitrator shall take these Applications for consideration expeditiously as requested by the parties, in the wake of exigencies expressed.

5] As far as Respondent No.3 Radhabai is concerned, the learned counsel has filed reply specifically contesting her impleadment in the Arbitration Proceedings. However, keeping the contentions open to be agitated before the Arbitrator, the whole dispute between the parties deserve reference for arbitration.

6] By keeping all the rights and contentions of the parties open, there is consensus on the reference being made to Justice R.D. Dhanuka, (Retired Chief Justice of Bombay High Court), who shall act as an Arbitrator, to arbitrate the disputes that have arisen between the parties out of the Agreement dated 31.03.2007 read with Agreement dated 25.07.2008, read with all the Agreements executed pursuant thereto.

7] The details of the Proposed Arbitrator are as follows :-

Mr.Ramesh D. Dhanuka
(Former Chief Justice of Bombay High Court)
Address : 11B, 11th Floor, Nirmal, Vidhan Bhavan Marg,
Nariman Point, Mumbai – 400 021.
Email :- rdhanuka5@yahoo.com
rameshddhanuka5@gmail.com

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 Prothonotary and Senior Master 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 fees payable to the Arbitrator, shall be determined by the learned Arbitrator, in consultation with the parties.

All rights and contentions of the parties are kept open.

8] While referring the disputes to the Arbitrator, the order dated 09.02.2022, which till date is in force, shall continue to operate, till the Arbitrator take the Application filed under Section 17 for hearing and it is open to the learned Arbitrator to continue, vacate or vary the same.

[BHARATI DANGRE, J]