

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.100 OF 2024

Bernardine aud Henrique

...Applicant

Versus

Om Developers & Ors

...Respondents

Mr OP Singh, for the Applicant.

CORAM. ARIF S. DOCTOR, J

DATED. 1st October 2024

PC:-

1. This is an Application filed under Section 11 of the Arbitration and Conciliation Act 1996 and arises out of a Development Agreement dated 5th May 2015 and a Supplementary Agreement dated 15th June 2016 which was entered into between the Applicant and the Respondents-Developers. Respondents Nos. 2 and 3 are stated to be the partners of Respondent No. 1-Developer. Mr Singh, Learned Counsel appearing on behalf of the Applicant invited my attention to the arbitration clause contained in the said Agreement, which reads as under:

“4.9 If any Dispute arising between the Parties is not amicably settled within- fifteen (15) days only days of commencement of attempts to settle the same as provided

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above, the Dispute shall be referred to, and be finally settled by arbitration; adjudicated by a single arbitrator, whose decision shall be final and binding on both the Parties. The arbitration proceedings shall be conducted in the English language at Mumbai and shall be governed by the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force.”

2. He points out that the Agreement has been duly executed by the Respondents and the Applicant. Learned Counsel then submits that on account of certain disputes and differences which arose between the parties the Applicant invoked arbitration vide notice dated 26th July 2023 he submits that the same was duly served upon the Respondents. However, there is no response he then placed reliance upon an Affidavit of Service dated 6th July 2024 to prove service of the present Application upon the Respondents, despite which none has appeared.

3. After hearing learned Counsel for the Applicant, I am prima facie satisfied that there exists Arbitration Agreement. The Respondents though served, none appeared to oppose the Application. Hence, I find no reason not to appoint an Arbitrator. The Application is, therefore, allowed in terms of prayer clause (a), which reads as under:

“(a) That this Hon'ble Court by an order or direction be pleased to appoint sole arbitrator in respect of dispute and differences that have arisen between the parties under the deed of development agreement dated 5.5.2015 and supplementary agreement dated 15.6.2016 to resolve the dispute.”

4. I, therefore, appoint Mr Akash Rebello, Advocate to act as a Sole Arbitrator in the matter to decide the disputes and differences between the parties on the following Terms and Conditions:

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Akash Rebello, 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 Applicant within one week from the date this order is uploaded.

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

Arbitrator **Mr Akash Rebello, Advocate**

Address 11A, Examiner Press Bldg, BSE
Lane, Fort,
Mumbai 400 001

Mobile 9930058606

Email akashrebello@11exp.com

(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 Applicant 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) **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.
 - (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
 - (h) **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.
 - (i) **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.
 - (j) **Venue and seat of arbitration.** Parties agree that the venue and seat of the arbitration will be in Mumbai.
5. The Arbitration Application is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J)