

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. ARBITRATION APPLICATION NO.09 OF 2024

Santosh Cordeiro & Anr. .. Applicants

Versus

Motilal Oswal Financial Services Ltd. .. Respondent

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Mr.Rishabh Shah with Ms.Shivani Bansal i/b D.S. Associate for
the Applicants.

Mr.Mayank N. Mishra i/b Lex Firmus for the Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 02nd MAY, 2024

P.C:-

1. The learned counsel for the Respondent has raised a serious objection about the dispute being referred to arbitration, in the wake of the clause contained in the agreement executed between the parties, and reliance is placed on Section 41 of the Presidency Small Cause Courts Act, 1882 to submit that since the said statute has created a special remedy, the dispute is not arbitrable.

2. This objection is duly considered in the wake of the various authoritative pronouncements placed before me. However, since the property viz.Unit No.718, 7th floor, Palm

Spring Centre, is situated at Link Road, Malad (W), Mumbai-400 064, the Small Causes Court do not exercise territorial jurisdiction over Malad. Pertinent to note that Section 17 of the Presidency Small Cause Courts Act clearly contemplate that the local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

When one turn to Part II of the Bombay High Court (Original Side) Rules, 1980, relating to the jurisdiction of the High Court on its original side, Chapter I has specifically set out that the ordinary original civil jurisdiction of the High Court extends to Greater Mumbai and it include the areas set out therein, which include the town and Island of Mumbai as well as certain villages of Mumbai Suburban District and in Thane District. This do not cover Malad, though Village Malad in Thane District is included.

3. In the wake of the aforesaid position emerging, the objection raised by the learned counsel for the Respondent about arbitrability of the dispute cannot be entertained and in the wake of the existing arbitration clause and the arbitration having been invoked, the dispute must go for arbitration.

4. In the wake of the aforesaid, I deem it appropriate to appoint a sole Arbitrator to decide the disputes and differences between the parties under the document referred to above. The details of the proposed Arbitrator are as below :-

Name of the Arbitrator :-	Ms. Gulnar Mistry
Address :-	101, 1 st floor, 1 Infinity, Cawasji Patel Street, Fort, Mumbai -400 001
Email ID :-	gm@mistrychambers.com
Contact No. :-	9820776272

The Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application

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

The sole Arbitrator shall be entitled to the fees prescribed under the 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.

The Advocate for the Applicant shall intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this Order.

In addition, the office of the Prothonotary and Senior Master of this Court shall also intimate the Arbitrator about his appointment, within a period of one week from the date of uploading of this order.

Needless to state that all the contentions of both the sides are left open, to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

5. Comm. Arbitration Application No.09 of 2024 stands disposed off accordingly.

(SMT. BHARATI DANGRE, J.)