

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 251 OF 2024

Malti Madhukant Thakker

...Petitioner

Versus

Jethabhai Gopaljis

...Respondent

Mr Vivek Kantawala, with Amey Patil & Vivek M Sharma, for the
Petitioner.

Mr Shrikrishna Ganbavale, with Mehul Shah & Shubham K Kanade, for
the Respondent.

CORAM: ARIF S. DOCTOR, J

DATED: 19th August 2024

PC:-

SHEPHALI
SANJAY
MORMARE

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by SHEPHALI
SANJAY
MORMARE
Date: 2024.08.19
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1. This is the Petition filed for substitution of the Arbitrator appointed towards hearing the reference between the parties. After having heard the Learned Counsel appearing for the parties, I have no hesitation that the Arbitrator was forced to recuse himself on account of the conduct of the Respondent. Mr Ganbavale, Learned Counsel appearing on behalf of the Respondent, however, today assures the Court that in the event the Court appoints the Arbitrator to decide the disputes and differences, there shall be full cooperation by his client in disposing of the Petition. Hence, both sides leave appointment of Tribunal to this Court.

2. In view of this, I appoint Mr Dharam Jumani, Advocate of this Court to hear and decide the disputes and differences between the parties on the following Terms and Conditions.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Dharam Jumani, 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 **Mr Dharam Jumani, Advocate**

Address Office Nos. 4 & 5,
Currinjee Building, 2nd Floor,
MG Road, Fort,
Mumbai 400 001

Mobile 7666044440

Email dharam@chambers-dj.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 Petitioners 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 present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** Since the appointment of the Arbitrator is made by this Court, it is made clear that the Learned Arbitrator shall be at liberty to fix his own fees and fees shall not 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.

3. Given the fact that the previous Tribunal has recused itself, the time for completion of the arbitration proceedings shall commence from the date on which a copy of this order is uploaded.

4. Mr Kantawala points out that the costs of Rs. 12,000/- as set out in the minutes of the meeting dated 20th April 2024, shall be shared in equal proportion by the parties.

5. The parties along with a copy of this order make an application for return of the proceedings before the earlier Arbitrator, which I am informed that Justice JP Devadhar,

6. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J)