

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 270 OF 2024

Pearllite Real Properties Private Limited

...Petitioner

Vs.

Manan Gupta & Anr.

...Respondents

Mr. Ashish Kamat, Senior Advocate a/w Shirani Khanwilkar and Abhishek Kothari i/by DSK Legal for the Petitioner.

Mr. Pritesh Burad a/w Disha Patil i/by Pritesh Burad Associates for Respondent No.1.

Mr. Rudresh Jagdale for Respondent No.2.

CORAM : ARIF S. DOCTOR, J.

DATE : 9TH SEPTEMBER, 2024

P.C.:-

1. This is an application filed under the provisions of Section 14 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) *inter alia* seeking termination of the mandate of Respondent No.3 to act as an Arbitrator on account of his appointment being in violation of *inter alia* Section 12(5) of the Arbitration Act.

2. Mr. Kamat, Learned Senior Counsel appearing on behalf of the Petitioner submits that the appointment of Respondent No.3 is bad in law since

the same was admittedly a unilateral appointment. He invited my attention to the arbitration clause contained in the Agreement for Sale executed between the Petitioner and Respondent No.1 and points out that the same does not prescribe any procedure for appointment of Arbitrator. It is thus he submits that an Arbitrator could have only be appointed (a) either by consent of the parties and (b) absent such consent, by an application to the Court under Section 11 of the Arbitration Act. Mr. Kamat points out that in the present case it is not in dispute that the Petitioner has never consented to the appointment of an Arbitrator nor is it in dispute that no application under Section 11 for appointment of an Arbitrator was filed by the Respondents.

3. Mr. Kamat then points out that the arbitration notice in question has not even been issued by Respondent No.1 but has been issued on the letterhead of Respondent No.2 and has been merely signed by Respondent No.1. It is thus his submission that the invocation of arbitration itself is bad in law and not as contemplated under the provisions of Section 21 of the Arbitration Act, since the party to the Arbitration Agreement i.e. Respondent No.1 has not invoked arbitration. It is thus his submission that even the invocation is bad in law.

4. Mr. Burad, Learned Counsel appearing on behalf of Respondent No.1 though initially sought to justify the invocation, submitted that the mandate of the Tribunal given the settled position of law would require to be terminated and that Respondent No.1 would issue a fresh notice under Section 21 of the

Arbitration Act for appointment of an Arbitrator which would also contain the name of the proposed Arbitrator.

5. Mr. Kamat submitted that in the event such notice is issued, the Petitioner would respond to the same within two weeks of its receipt.

6. In view of the above, I am inclined to allow the Petition by terminating the mandate of Respondent No.3 for the reasons already indicated above and also the fair stand now taken by Respondent No.1.

7. Petition is accordingly disposed of.

(ARIF S. DOCTOR, J.)