

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10147 OF 2024**

1. Jaywant Sitaram Gujar,
Age: 65 Years, Occu.: Business,
 2. Ravindra Sitaram Gujar,
Age: 63 Years, Occu.: Business,
R/At: 62D, Shaniwar Peth, Satara.
 3. Devidas @ Ramesh Sitaram Gujar,
Age: 73 Years, Occu.: Retired,
R/At. 59/60, Shaniwar Peth,
Tal/Dist. Satara.
-Petitioners

Vs.

1. Anil Sitaram Gujar,
Age: 66 Years, Occu.: Retired,
R/At. 884, Shaniwar Peth, Satara.
 2. Meena Bhunuprasad Modi,
Age: 77 Years, Occu.: Housewife,
R/At. 71, Maniratna, Division No.2,
In front of Vasana Kundan Tenement
Ahmedabad – 7, Gujarat.
 3. Chaya Arvind Gandhi,
Since Deceased Through L.Hs.
 - 3a. Arvind Joshi,
Age: 65 Years, Occu.: Service,
 - 3b. Kiran Arvind Joshi,
Age: 35 Years, Occu.: Service,
 - 3c. Nikhil Arvind Joshi,
Age: 32 Years, Occu.: Service,
Respondent No.3a to 3c R/At. Block
No.A-402, Shrirang Co-operative Society,
Near Ganesh College, Navavadaj,
Ahmadabad-13, Gujrat.
-Respondents

Mr. Shailesh Chavan (Through VC) with Mr. Sujit Nikam, for the Petitioners.

Mr. Prabhanjan B. Gujar (Through VC) with Mr. Sachin M. Bhavar, for the Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 1st DECEMBER 2025

PRONOUNCED ON : 4th DECEMBER 2025

JUDGMENT :-

1. The Petitioners impugn order dated 22nd April 2024 passed by District Judge, Satara in Miscellaneous Civil Appeal No.17 of 2024, thereby upholding order dated 22nd October 2019 passed by Civil Judge, Junior Division, Satara below Exhibit 34 in Regular Civil Suit No.462 of 2017.

2. The Respondent No.1 instituted Regular Civil Suit No.462 of 2017 seeking relief of partition and separate possession in respect of suit properties. Petitioners are defendants in said suit. Petitioners caused their appearance and filed written statement that suit is not maintainable as dispute raised in suit needs to be referred to Arbitrator in term of Memorandum of Understanding (For short, 'MoU') entered between parties. Petitioners filed separate application below Exhibit 34 under Section 8 of Arbitration and Conciliation Act, 1996 seeking reference to arbitration. The Trial

Court rejected application vide order dated 22nd October 2019. Aggrieved Petitioners filed Miscellaneous Civil Appeal No.17 of 2024 before Principal District Judge, Satara, who rejected appeal vide impugned order dated 22nd April 2024.

3. Mr. Shailesh Chavan, learned Advocate appearing for Petitioners invites attention of this Court to MoU dated 28th May 2010. It stipulates that Shri. Paresh Narayandas Doshi being close relative of parties knows family affairs and, therefore, his advice would be imperative in matter of family partition. The agreement further stipulates that Paresh Narayandas Doshi is appointed as arbitrator for partition and amicable settlement of customary family business. Mr. Chavan, therefore, urge that in light of specific stipulation in MoU dated 28th May 2010, dispute raised in suit is referable to arbitration to Mr. Paresh Narayandas Doshi. However, Trial Court failed to appreciate the contents of MoU in its proper perspective. Similarly, Appellate Court did not apply its mind to facts of case and rejected appeal. In support of his contentions, he relies upon observations of Delhi High Court in case of ***Parasramka Holdings Pvt. Ltd. v. Ambience Private Ltd. & Anr.***¹

1 2018 Supreme (Del) 1001.

4. Per contra, Mr. Prabhanjan Gujar, learned Advocate appearing for Respondents would submit that there was no agreement containing arbitration clause between parties. The MoU cannot be treated as agreement and stipulation therein would not constitute arbitration clause requiring appointment of Mr. Paresh Narayandas Doshi as arbitrator. He would further point out that agreement simply suggests that Mr. Paresh Narayandas Doshi being conversant with family affairs, his advice would be imperative for amicable settlement of dispute. The terms of MoU nowhere stipulates reference of dispute to arbitration. He would further submit that unfortunately during pendency of this Writ Petition, Mr. Paresh Narayandas Doshi expired. Therefore, even otherwise prayer for reference of arbitration cannot be considered.

5. Having considered submissions advanced by learned Advocates appearing for respective parties, it cannot be disputed that suit has been instituted for partition and separate possession of family property. The plaintiff/Respondent No.1 claimed his 1/6th share in suit property. Petitioners had filed written statement with specific objections that their father Sitaram Tukaram Gujar has appointed

Shri. Paresh Narayandas Doshi as Arbitrator in matter of partition of family properties and also made application for reference of dispute to arbitration in terms of Section 8 of Arbitration and Conciliation Act, 1996.

6. The plain reading of MoU nowhere stipulates that dispute between parties in relation to partition has to be referred to arbitration. It only states that advice of Mr. Paresh Narayandas Doshi would be imperative as an Arbitrator. Apart from aforesaid terms of agreement, unfortunately Mr. Paresh Narayandas Doshi expired during pendency of proceeding. Therefore, in absence of specific clause requiring dispute to be revolved through arbitration only, contention of Petitioners that reference to arbitration was imperative cannot be countenanced.

7. The Trial Court while rejecting Petitioner's application filed at Exhibit 34 observed that MoU is made for family settlement and suggests for having consultation of Mr. Paresh Narayandas Doshi. Similarly, Appellate Court has also observed that Mr. Paresh Narayandas Doshi was named in MoU for consultation and not as an Arbitrator in case of dispute as to partition. This Court do not find

an error of jurisdiction in the impugned order. Further, on account of unfortunate death of Mr. Paresh Narayandas Doshi, reference as claimed would not be possible. It is informed by parties that suit proceeded and trial is already commenced and evidence of parties is recorded.

8. In that view of matter, there is no reason to cause interference under Article 227 of Constitution of India. Hence, Writ Petition stands rejected.

9. However, Trial Court shall endeavour to dispose of suit, which is pending since 2017, at the earliest and in any case, within a period of one year from today.

(S. G. CHAPALGAONKAR, J.)

Digitally
signed by
RAJU
DATTATRAYA
GAIKWAD
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