



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11123 OF 2025**

Rahul Ramesh Shelar	...	Petitioner
versus		
Raj Realtors and Ors.	...	Respondents

Mr. Bhavesh Parmar with Ms. Reshma Nair, Mr. Vivekanand Akshali, Mr. Rajesh Sahani i/by Devmani Shukla and Vijay Prakash Yadav, for Petitioner.
Mr. Farhan Dubash with Mr. Jeetenndra Sachhdev, Mr. Harshal Manek, Mr. Abubakar Patel i/by JS Legal, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 21 AUGUST 2025

ORDER ORDER :

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 23 July 2025 passed by the learned Arbitrator on an application preferred by the Petitioner seeking recusal of the arbitrator.
3. Mr. Parmar, learned Counsel for the Petitioner, submitted that the appointment of Mr. Bernardo Reis, Advocate as the arbitrator, by this Court by an order dated 26 August 2024 under Section 11 of the Arbitration and Conciliation Act, 1996, was not in accordance with the provisions contained in Section 11(3-A) of the said Act, 1996. It was submitted that Mr. Reis is not on the panel of arbitrators maintained by the High Court for discharging the functions of the arbitral tribunal. The Petitioner was not aware of the said fact

when the Court had appointed the arbitral tribunal. Therefore, an application was filed before the learned Arbitrator seeking his recusal.

4. The thrust of the submission of Mr. Parmar, the learned Counsel for the Petitioner was that under the provisions of Sub-Section (3-A) of Section 11 of the Act, 1996, in the absence of grading of arbitral institutions by the Arbitration Council as provided under Section 43-I of the Act, 1996, the Chief Justice of the High Court is required to maintain a panel of arbitrators for discharging the functions and duties of arbitral institutions and once such a panel is maintained, the appointment has to be from amongst the persons included in such panel only.

5. Sub-Section (3-A) of Section 11 of the Act, 1996 came to be inserted by the Act 33 of 2019. It reads as under :

(3-A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purpose of this Act :

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth

Schedule :

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.”

6. The Arbitration and Conciliation (Amendment Act) 2019 (Act of 33 of 2019) was enacted to promote the institutional arbitration. The promotion of institutional arbitration by strengthening the Indian Arbitral Institution was found critical to the dispute resolution through arbitration. Pursuant to the recommendations of the high level committee constituted under the Chairmanship of Hon'ble Mr. Justice B.N.Shrikrishna, former Judge of the Supreme Court of India, Act No.33 of 2019 was introduced inter alia to :

“(i) to amend section 11 of the Act relating to “Appointment of Arbitrators” so as to change the present system of appointment of arbitrators by the Supreme Court or High Court, to a system where the arbitrators shall be appointed by the “arbitral institutions” designated by the Supreme Court or High Court;

(ii) In case where no graded arbitral institutions are available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institutions;

(iii) to insert a new Part I-A to the Act for the establishment and incorporation of an independent body namely, the Arbitration Council of India for the purpose of grading of arbitral institutions and accreditation of arbitrators, etc.,

7. The aforesaid impetus which was sought to be given to institutional arbitration by establishing arbitral council and empowering it to grade arbitral institution, and do accreditation of arbitrators does not imply that the High Court has no power to appoint a person as an arbitrator, whose name is not included in the panel of arbitrators maintained by the Chief Justice of the High Court.

8. The proviso to sub-Section (3-A) cannot be so construed so as to limit the choice of arbitrator to be appointed, in all cases, from amongst the persons included in such panel of arbitrators only. In the exigency of the situation or the circumstances of the given case, the Court may consider it expedient to appoint the person, whose name is not included in such panel, as the arbitrator.

9. In any event, in essence, challenge of the Petitioner is to the very appointment of the arbitrator by this Court by an order dated 26 August 2024. If that is the case, an application seeking recusal of the arbitrator, so appointed by the Court, is not an appropriate remedy. The Petitioner will have to work out his remedies qua the said order dated 26 August 2024 in an appropriate proceeding. Therefore, the Writ Petition does not deserve to be entertained.

10. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)