

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13127 OF 2025

Karansingh Ravindrasingh Chada ..Petitioner

Versus

Ninetastic Ventures Private Limited & Ors ...Respondents

Mr. Sandeep D. Shinde, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATE : 14th OCTOBER 2025

ORDER:

1. Heard Mr. Sandeep Shinde, the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 5th July 2025 passed by the learned Civil Judge, Senior Division, Nashik, whereby the parties to SCS No. 368 of 2025, were referred to Arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 ("The Act, 1996").
3. The Defendant No.2 is the holder of the premises bearing Survey No. 180/1 admeasuring 11200 sq mtrs alongwith a shed standing thereon, situated at village Belgaon Dhaga, Taluka and District Nashik. The Defendant No.1 is a company registered under the Companies Act,1956.

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4. The Defendant No.2 had executed a Leave and License Agreement to allow the Defendant No.1 to use and occupy the Suit premises vide Agreement dated 31st December 2020 for a term of five years commencing from 1st January 2021. The Defendant No.1 was running business of restaurant and banquet in the Suit premises under the name and style of, “DESERTSHIP”.

5. The Defendant No.1 entered into a Management Consultancy Contract with the Plaintiff on 10th January 2024 and, thereby, allowed the Plaintiff to use and occupy the Suit premises for the restaurant management services for a period of five years commencing from 6th January 2024, on certain terms and conditions. The Management Consultancy Contract *inter alia* contained an Arbitration Clause for resolution of dispute by a sole Arbitrator in accordance with the provisions of the Act, 1996.

6. The Petitioner-Plaintiff alleged, on 19th May 2025, the Defendant No.2-landlord abruptly locked the main entrance of the Suit premises. The Plaintiff has been made to suffer severe monetary loss on account of the closure of the Suit premises by the Defendant No.2. It further transpired that, the Defendant Nos. 1 and 2 have resorted to such illegal acts, in collusion.

7. On 27th May 2025, the Defendant No.1 has issued a notice of termination of Management Consultancy Agreement to the Plaintiff

purportedly in breach of the obligations under the Management Consultancy Contract. The Plaintiff, thus, instituted a Suit for refund of the security deposit along with interest and a declaration that the termination notice dated 27th May 2025 was illegal and void. Compensation was also sought from Defendant Nos. 1 and 2.

8. The Defendant No.1 appeared and filed an Application under Section 8 of the Act, 1996, for a reference of the dispute to Arbitration.

9. By the impugned order, the learned Civil Judge was persuaded to refer the parties to Arbitration observing, *inter alia*, that though the Defendant No.2 was not a party to the Management Consultancy Agreement between the Plaintiff and the Defendant No.1. Yet it cannot be said that there was no privity of contract between the Plaintiff and the Defendant No.2. Thus in the light of the Constitution Bench judgment in the case of **Cox And Kings Limited Vs SAP India Private Limited And Anr**,¹ the parties can be referred to Arbitration though the Defendant No.2 was a non-signatory.

10. Being aggrieved, the Petitioner has preferred this Petition.

11. Mr. Shinde, the learned Counsel for the Petitioner, submitted that the learned Civil Judge committed a grave error in law in referring to the parties to the Arbitration though the Defendant No.2 was not a party to the Arbitration Agreement. The learned Civil Judge was not justified in placing reliance on the decision in the case of Cox and King

1 (2024) 4 SCC 1.

Limited (Supra) and in discarding the judgment of the Supreme Court in the case of **Sukanya Holdings (P) Ltd Vs Jayesh H. Pandya**² which squarely governed the facts of the case.

12. To buttress this submission, Mr. Shinde placed reliance on a judgment of the Supreme Court in the case of **Kamal Gupta & Anr Vs M/s L.R. Builders Pvt Ltd & Anr**,³ wherein the Supreme Court, set aside an order which permitted a stranger to remain present in the Arbitration proceeding especially when the Award to be passed would not be binding upon such stranger.

13. I have considered the submissions and the material on record. The jural relationship between the parties is not in dispute. The Defendant No.1 is the licensee of the Suit premises; of which the Defendant No.2 is the landlord. Indisputably, the Plaintiff's rights and obligations flow from the Management Consultancy Contract.

14. Under the said Contract, the Defendant No.1 has agreed to outsource the management activities of the restaurant to the Plaintiff. The latter was to provide operational, management and marketing services to the Defendant No.1. Incontrovertibly the Management Consultancy Contract contains Arbitration Clause.

15. Plainly, all the disputes between the Plaintiff and the Defendant No.1 have their genesis in the rights and obligations which flow from

2 (2003) 5 SCC 531.

3 2025 INSC 975.

the said Management Consultancy Contract. The Defendant No.1 has purportedly terminated the Management Consultancy Contract by a notice dated 27th May 2025. In the Suit, the Plaintiff has sought declaration that the said termination is bad and illegal. The Plaintiff also seeks the refund of the security deposit along with interest thereon from the Defendant No.1

16. Primarily the dispute is between the Plaintiff and the Defendant No.1. Undoubtedly, the Defendant No. 2 has been impleaded as a party-Defendant to the said Suit and a relief of compensation has been made qua Defendant Nos. 1 and 2 jointly.

17. In the backdrop of the aforesaid nature of the Suit, the disputes that have arisen between the parties appear to be primarily in relation to the Management Consultancy Contract which contains the Arbitration Clause. With the termination of the Management Consultancy Agreement, the dispute is principally between the Plaintiff and the Defendant No.1. Therefore, the mere fact that the Plaintiff alleges that the Defendant No.2 had locked the main gate of the Suit premises, may not take the disputes that have arisen between the Plaintiff and the Defendant No.1, out of purview of the Arbitration. If such a contention is readily acceded to, then the Arbitration Agreement can be easily circumvented by merely adding a non-signatory as a party-Defendant.

18. The Supreme Court has enunciated in **Cox and King Limited (Supra)** that the definition of the “parties” under Section 2(1)(h) read with Section 7 of the Act, 1996 includes both the signatory as well as non-signatory parties, and under the Act, 1996 the concept of a “party” is distinct and different from the concept of “persons claiming through or under” a party to the Arbitration Agreement.

19. In any event, at the referral stage, the Court should leave it to the Arbitral Tribunal to decide whether the non-signatory is bound by the Arbitration Agreement. The observations of the Supreme Court in paragraph 169 of the judgment in the case of **Cox and King Limited (Supra)** read as under:

“169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the arbitral tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The tribunal can delve into the factual, circumstantial, and legal

aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the arbitral tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by arbitral tribunal under Section 16.”

20. The reliance by Mr. Shinde on the decision in the case of **Kamal Gupta (Supra)** does not advance the cause of the submission on behalf of the Petitioner as, in the said case, the Supreme Court while considering the question whether it is permissible for a non-signatory to an Agreement leading to arbitration proceedings to remain present in such arbitration proceedings, the Supreme Court observed that permitting a stranger to remain present in the arbitration proceedings especially when the Award to be passed cannot be binding on such stranger would be charting a course unknown to law. The remedy, if any, to a party who is not signatory to the Agreement is available under Section 36 of the Act if such Award was sought to be enforced against him. The aforesaid pronouncement would not govern the facts of the case at hand.

21. It is also imperative to note that in the instant case, Defendant No.2, the non-signatory has not raised any objection to his joinder. On

the contrary the trial Court has noted, the Defendant No.2 has stated before the Court that he was ready to cooperate if the matter was referred to arbitration. That implies the consent of the Defendant No.2 for the resolution of the dispute through arbitration.

22. In the aforesaid view of the matter, this Court does not find any justifiable reason to interfere with the impugned order. It is further clarified that the Plaintiff is at liberty to raise the issue of jurisdiction of the Arbitral Tribunal qua the Defendant No.2 before the learned Arbitrator.

23. Hence the following order:

: O R D E R :

Petition stands dismissed.

No costs.

[N. J. JAMADAR, J.]