

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.180 OF 2025
WITH
COMMERCIAL ARBITRATION PETITION NO.156 OF 2025
WITH
INTERIM APPLICATION NO.1196 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO.156 OF 2025

Suryoday Small Finance Bank Ltd. ...Petitioner/Applicant
Versus
Harshad Shah ...Respondent

Sr. Adv. Gautam Ankhad a/w *Nishta Garg & Aashka Shell i/b*
Adv.Kartik Garg, Advocates for Petitioner/Applicant.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : MAY 6, 2025

PC :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*"the Act"*), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under the Sale Deed and Indemnity cum Undertaking both dated November 6, 2023. The arbitration agreement is contained in Clause 15 (found at Page 60 of the Application). In the interest of brevity, the arbitration agreement is

not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. The objection from the Learned Counsel for the Respondent is that the Respondent had filed a suit seeking certain reliefs against Bank of Baroda, which is a mortgagee of the property that has been agreed to be sold to the Applicant in these proceedings and an order has also been passed in the said suit. It is his contention that the filing of an affidavit in reply by the Applicant in those proceedings constitutes a waiver from the arbitration agreement between the parties.

3. Having examined the record with the assistance of the Learned Counsel, it is seen that the suit in question was not filed by the Applicant but by the Respondent. Moreover, although a specific prayer had been sought to restrain the Applicant from taking any coercive steps, no such relief has been granted. The suit is primarily directed against Bank of Baroda and not against this Respondent. The filing of an affidavit in that suit would not, *prima facie*, constitute a waiver of the nature that the very existence of the arbitration agreement stands negated. It would be a very convenient stratagem, should such a contention be acceptable, to make a party to an arbitration agreement a party to some other proceedings, and treat an affidavit filed there as a waiver of arbitration.

4. Consequently, it would be inappropriate to hold up these proceedings. It is left open to the Respondent to agitate his objections on jurisdiction under Section 16 of the Act before the Arbitral Tribunal.

5. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the Supreme Court's decision rendered by a seven-judge Bench in the *Interplay Judgement*¹ followed by multiple others, including *SBI General*² and *Patel*³ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

6. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid Sale Deed and Indemnity cum Undertaking to arbitration by a sole arbitrator.

¹ *In Re: Interplay Between Arbitration Agreement under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 - (2024) 6 SCC 1*

² *SBI General Insurance Co. Ltd. Vs. Krish Spinning - 2024 SCC OnLine 1974*

³ *Ajay Madhusudan Patel Vs. Jyotindra S. Patel - 2024 SCC OnLine 2597 SC*

7. The Section 9 Petition stands converted into an Application under Section 17 of the Act of consideration by the arbitral tribunal appointed hereby. Given the efflux of time, the Petitioner is at liberty to modify or mould the contents of Section 9 Petition for its consideration as a Section 17 Application.

8. In these circumstances, both the proceedings are ***finally disposed of*** by referring all disputes and differences covered by this proceeding to arbitration by the Learned Sole Arbitrator hereby appointed in the following terms:-

A] Mr. Nausher Kohli, a learned advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Application shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

9. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

10. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

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