

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 430 OF 2025
IN
SUIT NO. 106 OF 2022

Atithi Buildiers and Constructors Pvt. Ltd and Ors.	...Applicants
<u>In the matter between</u>	
Suryanarayan Synthetics Pvt. Ltd.	...Plaintiff
V/s.	
Atithi Buildiers and Constructors Pvt. Ltd and Ors.	...Defendants.

Mr. Rehmant Lokhandwala with Mr. Hrishikesh Nadkarni i/b Pan India Legal Services LLP for Plaintiff/Respondents.

Mr. Preet Chheda, through VC for Defendants No. 1 and 2.

Mr. Shivam Srivastava i/b T. N. Tripathi & Co. for the Defendant No.3.

CORAM	:	ABHAY AHUJA, J.
DATE	:	13 th FEBRUARY, 2025

P.C. :

1. This Interim Application seeks to refer the disputes between the parties to arbitration under the Arbitration and Conciliation Act, 1996, in view of the Clause 72 of the Agreement for Sale dated 10th August, 2015.

2. Mr. Chheda, learned Counsel appears for the Applicants and submits that this Application has been preferred under Section 8 of the Arbitration and Conciliation Act, 1996 and draws the attention of this

Court to Clause 72 of the Agreement for Sale at page 63 of the Application and submits that in view of the said Clause, the dispute be referred to arbitration.

3. Mr. Lokhandwala, learned Counsel appearing for the Respondent/Plaintiff submits that although he does not dispute the arbitration clause in the agreement, however, in accordance with Section 8(2), the Application cannot be entertained by this Court unless it is accompanied by the original arbitration agreement or a duly certified copy thereof. Mr. Lokhandwala submits that the copy annexed to the Application is neither the original nor duly certified copy and that therefore, the Application is not maintainable.

4. Mr. Chheda, learned Counsel appears for the Applicant-Defendant, however, submits that the Plaintiff has itself relied upon the said agreement in the Plaint at page 50 and cannot raise this dispute at this stage and undertakes to furnish a certified copy within a period of one week.

5. A perusal of the Agreement for Sale dated 10th August, 2015, indicates that in Clause 72 of the said agreement, the parties have

indeed agreed to refer their disputes to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 and that the arbitration proceedings should be held in Mumbai.

6. There being no dispute with respect to the existence of the arbitration clause viz. a valid arbitration agreement, this Court deems it appropriate to refer the dispute to arbitration, subject to, within a period of one week, verification by the Prothonotary & Senior Master of this Court as to the existence of the original / certified copy of the Agreement for Sale dated 10th August, 2015, containing the said clause 72.

7. Learned Counsel submit by consent that the dispute can be referred to the arbitration of the Former Chief Justice of this Court, Justice Shri R.D. Dhanuka (Retired).

8. Accordingly, the following order is passed:

ORDER

i) The parties are referred to arbitration, in accordance with arbitration agreement contained under the Clause 72 of the Agreement for Sale dated 10th August, 2015.

ii) In view of the reference of the parties to arbitration, the Suit No. 106 of 2022 stands disposed. Refund of Court Fees as per Rules.

iii) The Registry is directed to return the original documents, if any, to the Plaintiffs.

iv) All contentions on merits are kept open.

v) By consent of parties, it is recorded that the Former Chief Justice of this Court, Justice R.D. Dhanuka, (Retired), to act as an Arbitrator in the dispute with respect to the Agreement for Sale dated 10th August, 2015. Learned Arbitrator's contact details are as under:-

Name : Justice R. D. Dhanuka (Retd.)
(Former Chief Justice, Bombay High Court)
Telephone: 022-69040000
Email: rdhanuka5@yahoo.com
Address: C/o Shri Chirag Shah, Advocate
11B, Nirmal Building,
11th Floor, Vidhan Bhawan Marg,
Nariman Point, Mumbai-400 021.

vi) The Advocate for the parties to intimate the Arbitrator about this order and his appointment by consent of the parties within a period of two weeks.

vii) The Arbitrator so appointed to make the disclosure as required under the provisions of the Arbitration and Conciliation Act, 1996, within a period of one week from the date of receipt of the intimation by the learned Advocates for the parties.

viii) The Arbitrator to charge fees as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996, read with the Rules framed by this Court in this regard which along with expenses are to be borne equally by the parties.

ix) The Interim Application to accordingly stand allowed and disposed as above.

(ABHAY AHUJA, J.)