



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY  
BENCH AT AURANGABAD**

**910 ARBITRATION APPLICATION NO. 41 OF 2024**

M/S Borse Brothers Engineer And Contractor Pvt Ltd Through Its Director Shri  
Jitendra Bhatu Sonawan

VERSUS

The Dhule Municipal Corporation Through The Municipal Commissioner

...

Advocate for Applicant : Mr. Amol Gawali  
Advocate for Respondents : Mr. N. N. Desale

...

**CORAM : ARUN R. PEDNEKER, J.**

**Dated : April 01, 2026**

**PER COURT :**

1. Heard.
2. The learned Counsel for the appellant submits that the appellant and the respondent have entered into a Development Agreement dated 03/03/2014. The said agreement itself contains an arbitration clause, i.e. Clause 19.3, which reads as under :

**"19.3 Arbitration**

a. Arbitrators

I. any dispute that is not resolved amicably through conciliation as provided in Article 19.1 and 19.2 shall be finally settled by arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three arbitrators, one Hon' Commissioner, Second Dy. Commissioner, Third Town Planner appointed by the Parties. A party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If the other Party fails to appoint its arbitrator, the Party appointing arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996."

3. The learned Counsel for the appellant submits that all the

preliminary stages before invoking arbitration as contemplated under Clauses 19.1 and 19.2 have also been concluded and, as such, the stage for appointment of an arbitrator has arisen. He submits that Clause 19.3 provides for appointment of three arbitrators who are officers of the respondent. In view of the judgment of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2019) 9 SCC 377**, such appointment of officers of one of the parties as arbitrators would not be permissible. Considering the same, the learned Counsel for the appellant submits that a retired Judge of this Court be appointed as the Sole Arbitrator.

4. The learned Counsel for the respondent has not disputed the factual aspect that there exists an arbitration clause between the parties. Considering this aspect of the matter, it appears that disputes have arisen between the parties which are required to be referred to arbitration. Certain disputes are, however, raised before me in respect of the seat and venue of arbitration.

a] **Appointment of Arbitrator :-**

Mr. Justice S. V. Gangapurwala (Retired) is appointed to act as sole arbitrator to adjudicate upon the disputes between the parties.

b] **Communication to Arbitrator of this order :**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant within one week from the date this order is uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following post and email addresses :

|              |   |                                                          |
|--------------|---|----------------------------------------------------------|
| Arbitrator   | : | Mr. Justice S. V. Gangapurwala (Retired)                 |
| Address      | : | Govardhangir, Kharakuwa, Near Porwal Bhavan, Aurangabad. |
| Phone No.    | : | 9545111995                                               |
| <b>Email</b> | : | <b>sanjay.gangapurwala@gmail.com</b>                     |

**c] Disclosure :**

The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Registrar of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Registrar on the file of this application. Copies will be given to both sides.

**d] Appearance before the Arbitrator :**

Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates and the parties to obtain appropriate directions from the arbitrator in regard to fixing a schedule for completing pleadings, etc.

**e] Contact / communication information of the parties :**

Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

f] **Section 16 application :**

The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

g] **Interim Application/s :**

(i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

h] **Fees :**

As per the Arbitration and Conciliation Act.

i] **Sharing of costs and fees :**

As per the Arbitration and Conciliation Act.

j] **Venue and seat of arbitration :**

Issue raised as regards the seat and venue of Arbitration can be raised before the Arbitrator.

All the contentions of the parties are kept open to be urged before the learned Arbitrator.

**( ARUN R. PEDNEKER, J. )**

*vj gawade/-.*