

Andreza



IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF ARBITRATOR NO. 12 OF 2024

M/s. K. C. Constructions Co., Thr. Its Man. ... Applicants
 Part., Jeremias D'Souza
 Versus

1. Harold Fernandes and 2 Ors. ... Respondents

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Divya Parab,
Advocate for the Applicants.

Mr. Pavithran AV, Advocate with Mr. P. Kholkar, *Advocate for the Respondents no. 2 and 3.*

CORAM : DR. NEELA GOKHALE, J.

DATE : 29th APRIL, 2026

P.C.

1. This is an application seeking appointment of sole Arbitrator to adjudicate upon the disputes that have arisen between the parties in terms of the Memorandum of Understanding (MoU) dated 29th May 2018 and amendment to the said MoU executed on 9th June 2022.

2. The Applicant is a Partnership Firm registered under the Indian Partnership Act, 1932.

3. The Applicant entered into an agreement dated 29th May 2018 with the Respondent no. 1 and his late wife Mrs. Mitzi Fernandes to purchase the suit property for a purchase consideration. Ms. Mitzi Fernandes died on 10th January 2022 before the discharge of the

covenants of the Agreement between the parties recorded in the MoU. Thus, an amendment to the said MoU was executed on 9th June 2022 between the Applicant and the Respondents herein to reflect the legal heirs of said Ms. Mitzi Fernandes, in the MoU.

4. It appears that there has arisen a dispute between the parties relating to the two MoUs. Thus, in terms of clause 15 of the MoU dated 29th May 2018, the Applicant invoked the Arbitration clause and issued a legal advise to the Respondents seeking to refer the matter to an Arbitral Tribunal. There was no response from the Respondents and hence the Applicant has filed the present Application seeking appointment of a sole Arbitrator to adjudicate the disputes between the parties.

5. Heard Mr. Sudin Usgaonkar, learned Senior Advocate appearing for the Applicant and Mr. Pavithran AV, learned Counsel appearing for the Respondent nos. 1 to 3.

6. I have heard the Counsel appearing for the respective parties and perused the papers with their assistance. Clause 15 of the MoU dated 29th May 2018, reads thus :

“15. In case of any dispute arises about the interpretation of any clauses, terms and conditions of this Memorandum of Understanding or relating to

any clauses, terms and conditions of this Memorandum of Understanding the same shall be settled by Arbitration laws in force.”

7. Since there is an Arbitration clause in the MoU dated 29th May 2018, the Applicant invoked the same. Notwithstanding that the Respondents failed to reply the notice invoking Arbitration, Mr. Pavithran, objects to the reference of the dispute to an Arbitrator, contending that the amendment to the MoU dated 9th June 2022 does not contain an Arbitration clause. He placed reliance on the decision of the Supreme Court in **NBCC (India) Ltd., vs. Zillion Infra Projects Pvt. Ltd.**¹, to canvas his argument that when the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the Arbitration clause from the referred document into the contract between the parties.

8. Having objected to the reference to Arbitration, during the course of hearing, Mr. Pavithran, on instructions, stated that the Respondents consent to the reference of the dispute to a sole Arbitrator. In these circumstances, by consent of the parties, Ms. Kshama Joshi, retired District Judge, is appointed as the sole Arbitrator to adjudicate the dispute between the parties. It is accordingly ordered as under :

1 (2024) 7 SCC 174

“(i) Ms. Kshama Joshi, Retired District Judge, is appointed as the sole Arbitrator. The Arbitrator to decide upon the disputes and differences between the Applicant and the Respondents which have arisen between the parties in terms of the Memorandum of Understanding (MoU) dated 29th May 2018 and amendment to the said MoU executed on 9th June 2022.

(ii) A copy of this order will be communicated to the learned Arbitrator by the Advocates for the respective parties within a period of one week from today.

(iii) The Arbitrator, so appointed, is requested to forward her/his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 to the Advocate for the Applicant, to enable her to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application.

(iv) The parties shall appear before the sole Arbitrator, on such date and at such place as she directs, to obtain appropriate directions regarding fixing of a schedule for completing pleadings etc. The Arbitrator shall give all further directions with reference to the arbitration and as to how it is to proceed.

(v) Both parties shall provide their contact and communication particulars to the sole Arbitrator within a period of one week from today. This information shall

include a valid and functional email address as well as the mobile numbers of their respective Advocates.

(vi) The Arbitrator shall charge her fees as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. All the arbitral costs and the fees of the Arbitrators will be borne by the Applicant and the Respondents equally and will be subject to the final Award that may be passed by the Tribunal.

(vii) The parties have agreed that the seat of the arbitration will be in Panaji, Goa, and the venue shall be as per the directions of the Arbitrator.

9. The Application is disposed of in the aforesaid terms. There shall be no order as to costs.

10. All contentions of all parties are left open to be adjudicated before the sole Arbitrator including any objections relating to the jurisdiction of the Arbitrator.

11. This order will be digitally signed by the Senior Private Secretary/Private Secretary/Personal Assistant of this Court. All concerned will act on production by email of a digitally signed copy of this order.

DR. NEELA GOKHALE, J