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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3852 OF 2023

IN

EXECUTION APPLICATION NO. 143 OF 2024

Kotak Mahindra Bank Limited ... Applicant

Versus

Gajaraj Singh Sendhav and another ... Respondents

.....
Ms. Reet Jain alongwith Ms. Shrutika Mane instructed by S.I. Joshi &
Co., Advocate for the Applicant.
None for the Respondents.

.....
CORAM : ABHAY AHUJA, J.
DATE : 6 APRIL 2026

PC. :

1. When the matter is called out, upon a query from this Court as to whether there has been an unilateral appointment of an arbitrator, Ms. Jain, learned Counsel appearing for the Applicant confirms the same. It is observed from the paragraph 2 of the award dated 19th January 2017 that in the agreement between the Applicant and Respondents, there is a Clause No.12.1, whereby it has been agreed that any dispute and/or difference and/or claims that arise between parties or any of them touching or concerning the

agreement or any condition or as to the rights, duties or liabilities of parties or any of them either during the continuation of the agreement or after completion or termination or purported termination shall be referred to the sole arbitrator to be appointed by the Lender, viz. the Applicant, according to the provisions of the Arbitration and Conciliation Act, 1996 (the “said Act”) and Rules thereunder and any amendment thereto from time to time shall apply.

2. In the case of *Bhadra International (India) Pvt. Ltd. and others vs. Airports Authority of India*¹, the Hon’ble Supreme Court has clearly observed that unilateral appointment of arbitrator is void ab initio and the ineligibility can be raised at any stage and even in execution.

3. In view of the aforesaid, the award dated 19th January 2017 is therefore set aside and the Execution Application as well as the connected Interim Applications stand dismissed.

4. It would be open to the parties to initiate fresh arbitration proceedings in accordance with law.

5. As far as limitation is concerned, the period from the invocation of the arbitration till today be excluded in initiating fresh arbitration proceedings.

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6. Liberty to apply in the event there exists an express agreement in writing in terms of proviso to Section 12(5) of the said Act waiving the ineligibility of the sole arbitrator or the right to object under Section 12(5) of the said Act.

(ABHAY AHUJA, J.)