

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

ARBITRATION PETITION NO. 87 OF 2026

Sharon Dsouza
Residing at Flat No.107, B Wing,
Shrikrishna Complex CHS Ltd.,
Bhabola Taluka – Vasai, Vasai West,
Dist.- Palghar – 400 202

...Petitioner/
Claimant

Versus

Kotak Mahindra Bank Limited
Having Address at 27 BKS, C 27, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051.
And a Branch Office at Zone II, 6th Floor,
Bldg. No.21, Raheja Infinity Park,
Off Film City Road, Dindoshi,
Malad (E), Mumbai – 400 097

...Respondent

Mr. Pradeep Purohit i/b Mr. Nityanand Ayodhya Yadav for the
Petitioner/Claimant

Mr. Omkar Shere h/f Vikrant Sabne & Associates for the Respondent

CORAM : SHARMILA U. DESHMUKH, J.

DATE : APRIL 20, 2026

ORAL ORDER :

1. By the present Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the challenge is to the impugned Arbitral Award dated 11th September 2025, directing the Petitioner herein to pay the sum of Rs. 10,80,215.42 along with 18% interest and Rs. 2,000 towards arbitration fees and expenses.

2. The sole objection which has been raised to the validity of the impugned Award is that the sole Arbitrator has been appointed unilaterally by the Respondent. Learned counsel appearing for the Petitioner would point out the loan agreement and, in particular, clause 10.15 of the arbitration agreement, which provides for the dispute to be referred to the arbitration of the sole Arbitrator appointed by the Bank. He submits that, in view of the settled position in law, the Award is a nullity and is unenforceable.

3. *Per contra*, learned counsel appearing for the Respondent would oppose the application and would submit that the Arbitrator came to be appointed after due notice to the Petitioner. He would submit that, though the arbitration agreement refers to the appointment of a sole Arbitrator appointed by the Bank, the dispute was referred to an institution which had appointed the Arbitrator.

4. I have considered the submissions and perused the loan agreement. Clause 10.15 of the loan agreement relating to the arbitration reads as under:

“10.15 This Agreement shall be construed and governed in accordance with and governed by the laws of India The Parties hereto expressly agree that all disputes arising out of and/or relating to this Agreement Including any related documents shall be subject to the exclusive jurisdiction of the Courts/Tribunals of the place/governing the place having territorial jurisdiction over the place in which the Branch Office is situated. Provided this clause shall not restrict the Bank and the Bank shall be entitled to initiate/take proceedings relating to a dispute in any Courts/Tribunals of

any other place which has jurisdiction. Provided further that if any dispute arising under this Agreement is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, to be conducted by a sole arbitrator, appointed by the Bank. The arbitration proceedings shall be conducted in English language. The award passed by the arbitrator shall be final and binding on the Parties. The cost of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. The venue of arbitration shall be the city in which the Branch Office is situated or such other place as may be determined by the Bank. If a Party is required to enforce an arbitral award by legal action of any kind, the Party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the Party seeking to enforce the award."

5. A perusal of the above clause would indicate that the agreement between the parties was to refer the disputes to the sole Arbitrator appointed by the Bank.

6. In view of the specific arbitration agreement between the parties, the contention of the learned counsel for the Respondent that there is no unilateral appointment, cannot be accepted. The arbitration agreement between the parties empowered the Respondent to nominate the sole Arbitrator.

7. The Hon'ble Apex Court, in the case of ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.***¹, has held that a person having an interest in the outcome of the dispute is ineligible not only to act as an Arbitrator but is also rendered ineligible to appoint an

1 (2020) 20 SCC 760

arbitrator. The present proceedings, pursuant to such unilateral appointment, are a nullity and cannot result into an enforceable award.

8. In light of the above, the impugned Award is hereby quashed and set aside. Petition is allowed.

[SHARMILA U. DESHMUKH, J.]