

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO. 1089 OF 2024

(REINDEER LAND AND SOLUTION PVT LTD THROUGH ITS DIRECTOR SUDESHCHANDRA
GUPTA
VS
ANANTA S/O MAHADEV WADEKAR)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. Nitin A. Lalwani and Mr. Ghanshyam Dani, Advocates for appellant.
Mr. R.A.Anthony, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.

DATED : MARCH 18, 2026

- 1) Mr.Anthony, learned counsel for the respondent tenders an application seeking permission to file documents on record, the said application is taken on record.
- 2) This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator in order to resolve dispute that has arisen between the parties under Agreement of Sale dated 27/04/2011. Execution of the agreement is not in dispute. Clause (17) of the agreement provides for resolution of disputes by arbitration. The said clause provides for appointment of sole Arbitrator.
- 3) The present applicant as purchaser has entered into agreement of sale with the respondent vendor. The dispute pertains to the claim of specific performance of contract and in the alternative for refund of money paid by the applicant/purchaser to the respondent/vendor and damages/compensation in addition to that. The applicant has issued notice on 08/06/2024 invoking arbitration clause suggesting name of

Justice B.P. Dharmadhikari, former Chief Justice of Bombay High Court as sole Arbitrator. The respondent has not responded to the said notice.

- 4) Learned counsel for the respondent opposes the application contending that the claim of the applicant is disputed by the respondent way back on 04/01/2016 by filing reply to intervention application filed by the applicant in Spl.C.S.No. 40/2011, which is a suit in relation to boundary dispute filed by the owner of adjoining land against the present respondent. The learned counsel for respondent also points out that the respondent has filed a suit being Spl.C.S.No.190/2023 for declaration that the agreement stands terminated and for revocation of power of attorney. Learned counsel contends that the present applicant has entered appearance in the said suit and is aware about the stand taken by the respondent. He therefore, contends that at this stage when the claim is hopelessly barred by limitation, the applicant cannot invoke the arbitration clause.
- 5) In order to counter this submission learned counsel for the applicant places reliance on judgment of the Hon'ble Supreme Court in the case of *Aslam Ismail Khan Deshmukh vs. ASAP Fluids Private Limited and another*, reported in *(2025) 1 SCC 502*, particularly, paragraphs 43, 44 and 53 thereof. Learned counsel for the applicant also contends that despite filing of the suit for declaration that the agreement stands terminated and cancellation of power of attorney, there are talks between the parties. Learned counsel for the applicant contends that limitation will be a mixed question of law and facts, and therefore, the said issue should be left open to be decided by the Arbitrator.

- 6) In view of the aforesaid legal position, in the considered opinion of this Court, it will not be possible to entertain the objection pertaining to limitation in the present proceeding. The application is allowed keeping point of limitation and other points with respect to maintainability of the claim open, for adjudication by the Arbitral Tribunal.
- 7) Learned advocates jointly make a request to constitute Arbitral Tribunal, comprising of Mr.S.S.Das, former District Judge as sole Arbitrator.
- 8) Mr.S.S.Das, former District Judge, is accordingly appointed as Arbitrator for resolution of dispute, arising between the parties, pursuant to agreement of sale dated 27/04/2011. The learned Arbitrator is requested to forward a disclosure statement to this Court, and if convenient, before 06/04/2026.
- 9) Stand over **10/04/2026**.

(ROHIT W. JOSHI, J.)