

Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
APPLN. FOR APPOINTMENT OF ARBITRATOR NO.2 OF 2023**

MANDREM HOTELS PRIVATE LIMITED,
REP. BY ITS DIRECTOR AND AUT.
SIGN., RISHAL SAWHNEY ... APPLICANT

Versus

SHAMBU SHARATH SAWANT(DEC)
THR. LRS. AND 19 ORS ... RESPONDENTS

Mr. Abhijeet Gosavi with Ms. Krupa Naik, Advocates for the
Applicant.

**CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 02nd May, 2024**

P.C.

1. Heard Mr. Gosavi learned counsel for the Applicant.
2. This is an application filed under Seciton 11(6) of Arbitration and Conciliation Act 1996 for appointment of Sole Arbitrator to decide the dispute between the parties.
3. Notices were issued to the Respondent, however, inspite of service, none appeared.
4. The Agreement dated 21.05.2011 is for sale of the property wherein Respondents agreed to the said sale of property to the Applicants on certain conditions as mentioned therein.
5. The said agreement contains clause No. 22 which reads

thus:

22. That in case of any dispute arising between the parties in relation to or connected to this agreement and which the Parties are unable to resolve amicably, the same shall be resolved by reference to arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996. The seat of Arbitration to be at Goa and the Courts in Goa alone shall have jurisdiction over all matters covered under the Agreement. The Arbitrator shall be bound by the terms of this Agreement and shall enforce the same and shall be bound to order Specific Performance as also to award damages for the breach hereof. The party not in default shall be entitled to protective Orders and to interim reliefs against the party in default as may be required to secure the due performance of the terms of this Agreement .

6. The Applicants issued a legal notice to the Respondents asking them to comply with the terms and conditions of the said agreement of sale since it is the contention of the Applicants that the Respondents failed to obey the conditions of the agreement which they were supposed to perform.

7. In spite of service of such legal notice, there was no response from the Respondent.

8. The Applicants vide their notice dated 31.05.2021, invoked

clause 22 of the agreement and called upon the Respondents to agree for the appointment of Arbitral Tribunal so as to decide the dispute between the parties. Even the names of three Arbitrators were suggested in such notice, invoking the Arbitration clause.

9. In spite of service of such notice, there was no response from the Respondents.

10. The record shows that though the Respondents were duly served in this proceedings, there is no appearance. Since the dispute arose between the parties in connection with the agreement dated 21.05.2011 which contains an arbitration clause, the Applicant is entitled for prayer in the present proceedings i.e. appointment of Arbitral Tribunal to decide the dispute between the parties.

11. Accordingly, Justice F.M. Reis, Former Judge of this Court is appointed as learned Arbitrator to decide the dispute between the parties.

12. In these circumstances, the following order is passed:

(a) The Application is allowed.

(b) Justice F.M. Reis, former Judge of this Court is appointed as the sole Arbitrator to decide the dispute between the parties.

(c) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Applicant, within a period of

one week from today.

(d)The learned sole Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him 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 and a copy of the same shall be furnished by the Advocate for the Applicant to the Advocate for the Respondents.

(e)The parties shall appear before the learned sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(f)Contact and communication particulars shall be provided by both sides to the learned 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 the respective Advocates.

(g)The parties have agreed that the sole Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018. The parties have further agreed that all the arbitral costs and the fees of the Arbitrator 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.

(h)The parties immediately consent to a further extension of six months to complete the arbitration, should the learned sole Arbitrator find it necessary.

(i) The parties have agreed that the seat of the arbitration will be at Panaji, Goa. However, the venue of the Arbitration shall be decided by the sole Arbitrator taking into consideration convenience of the parties as well as his convenience.

13. Application stands disposed of in above terms.

BHARAT P. DESHPANDE, J.