

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Arbitration Application No. 38/2024

Khetawat Financial Resource Private Limited, Branch Bhinmal,
District Jalore Through Its Authorized Representative Shri Jalam
Singh S/o Shri Bhur Singh, Aged About 48 Years, R/o Bhinmal,
District Jalore. -----Petitioner

Versus

1. Shri Samju Nath S/o Shri Kannath Kalbeliya, R/o Dhavala
Road Tanki Ke Pass Village Leta, Tehsil Jalore, District
Jalore.
2. Manju Devi W/o Shri Samju Nath Kalbeliya, R/o Dhavala
Road Tanki Ke Pass Village Leta, Tehsil Jalore, District
Jalore.
3. Amrit Lal S/o Shri Paras Mal Soni, R/o Kumharo Ka Was
Village Ghana Tehsil Jalore District Jalore.-----Respondents

For Petitioner(s) : Mr. Sravan Kumar Sainee

For Respondent(s) : None present

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

25/03/2026

1. The present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act of 1996") has been filed for the appointment of an independent and impartial sole arbitrator to resolve the disputes arising between the parties under the Loan Against Property (LAP) Agreement dated 26.11.2019.

2. Learned counsel for the applicant submits that a demand notice dated 20.10.2021 was served upon the respondents, calling upon them to pay the outstanding as well as regular monthly installments. The respondents, however, did not respond. Consequently, notice dated 10.09.2022 (Annx.6) was issued invoking Article 14 (Arbitration Clause) of the Loan Against Property Agreement. As no response was received, the applicant Finance Company proceeded to refer the dispute to a sole arbitrator appointed by it under Article 14 of the agreement.

3. The arbitrator so appointed conducted the arbitration proceedings and ultimately passed the award dated 17.03.2023.

4. Execution proceedings initiated by the applicant Finance Company in respect of certain identical awards were, however, dismissed on the ground that such awards were void and unenforceable. The Executing Court held that the unilateral appointment of the arbitrator by the Company was in violation of Section 12(5) of the Act of 1996, relying on the ratio of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Ors. vs. HSCC (India) Ltd., (2020) 20 SCC 760***. Reference has been given to one such order dated 29.05.2024, passed in Execution Petition No. 02/2024 (CIS No. 02/2024) by the Senior Civil Judge, Bhinmal, Jalore.

5. In view of the above, the applicant Finance Company consciously decided not to pursue the award dated 17.03.2023 and opted to initiate a fresh procedure for the appointment of an independent arbitrator.

6. Learned counsel for the applicant, on instructions, undertakes that the applicant Company shall not pursue the Award dated 17.03.2023.

7. Arguing on the merits of the present application, learned counsel submits that the respondents were under an obligation to pay the monthly installments under the loan but failed to do so despite the service of the demand notice dated 20.10.2021. Subsequently, notice dated 10.09.2022 invoking the arbitration clause (Article 14 of the agreement) was served, but no response was received. Accordingly, the present application for the

appointment of an impartial and independent sole arbitrator has been filed.

8. It is submitted that there is no dispute regarding the arbitration clause or the place of arbitration, which is as per the schedule mentioned in the contract. Learned counsel requested that an independent arbitrator be appointed as a sole arbitrator to resolve the disputes between the parties. It is further submitted that in a similarly situated matter, the co-ordinate bench of this Court in ***Khetawat Financial Resource Private Limited vs. Kheta Ram & Ors., S.B. Arbitration Application No. 28/2024***, appointed Advocate Mr. Dinesh Kumar Khandelwal as an independent and sole arbitrator. Therefore, it is requested that he may also be appointed as the sole arbitrator in the instant case.

9. In view of the above, it is evident that a dispute has arisen between the parties and notice dated 10.09.2022 invoking the arbitration clause has not been responded to. The dispute thus deserves to be referred to a sole arbitrator for resolution in terms of Article 14 of the agreement, which reads as under:

ARTICLE - 14: ARBITRATION

"All matters, question, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or in consequences of breaches, termination or invalidity thereof or relating to this agreement whether or not obligations of the Lender, the Borrower, Guarantor(s) or any other person or entity under the Agreement subsisting at the time of such dispute and whether or not the Agreement has been terminated or purported to be

terminated or completed, shall be settled by arbitration in accordance with the provisions of the Arbitration & Conciliation Act 1996 (as amended from time to time), and shall be referred to the Sole Arbitrator as nominated by the Lender, for arbitration. The award given by the Sole Arbitrator shall be final & binding on the Borrower and Guarantor(s). The venue of the arbitration shall be only at place mentioned in the SCHEDULE & Arbitration Proceeding shall be conducted in English Language. (chose the dialects)"

10. The award dated 17.03.2023 is, in any event, void in view of the ratio laid down in **Perkins (supra)** and is, therefore, of no consequence.

11. As regards the issue of limitation, the agreement in question is dated 26.11.2019. The first demand notice was served on 20.10.2021, and the notice invoking the arbitration clause was served on 10.09.2022, which is clearly within the period of limitation. The present application, filed on 16.08.2024, is also within the prescribed period of limitation.

12. In view of the above facts and observations, an independent and impartial sole arbitrator is required to be appointed for resolution of the disputes that have arisen between the parties.

13. Despite due service of notice, none has appeared on behalf of the respondents to contest the present application, nor has any reply been filed.

14. In view of the above submissions, the application under Section 11(6) of the Act of 1996 is allowed. **Advocate Mr. Dinesh Kumar Khandelwal** (Enrollment No. R/297/1994),

resident of Opp. BSNL Bhawan, Karda Road, Bhinmal, District Jalore (Mobile No. 9414425321), is appointed as the sole arbitrator to adjudicate upon the disputes raised vide notice dated 10.09.2022 (Annx.6).

15. The arbitration fee and costs shall be in accordance with the Fourth Schedule to the Act of 1996. The above appointment shall remain subject to the necessary disclosure being made by the arbitrator under Section 12 of the Act of 1996.

16. The Registry shall intimate Advocate Mr. Dinesh Kumar Khandelwal of his appointment. The parties are also at liberty to inform the arbitrator and obtain an appropriate date for necessary directions.

17. The parties are at liberty to participate in the arbitration proceedings through video conferencing, subject to the approval and convenience of the learned arbitrator.

18. Pending applications, if any, stand disposed of.

(MUKESH RAJPUROHIT),J

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