

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 6 OF 2015

MR. ASHOK RAMCHANDRA NAIK.	... Applicant
Versus	
MR. SUNIL PANDURANG KESARKAR AND 3 ORS.,	... Respondents

Mr. Jatin Ramaiya, Advocate for the Applicant.

Mr. Gaurish N. Agni, Advocate for the Respondents.

Coram:- F. M. REIS, J.

Date:- 28th August, 2015

P.C.:

Heard Mr. J. Ramaya, learned Counsel appearing for the applicant and Mr. G. Agni, learned Counsel appearing for the respondents.

2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996. It is pointed out by learned Counsel appearing for the applicant that in the partnership agreement between the parties there is an arbitration clause and that the claim of the applicant arises from such partnership agreement.

3. On the other hand, Mr. G. Agni, learned Counsel appearing for the respondents has strongly opposed the above application. It is pointed out by the learned Counsel that way back in the year 2002, a notice was already issued by the applicant to appoint an Arbitrator on

the ground of alleged dispute and no action was taken by the applicant up to the year 2015 to proceed to appoint an Arbitrator. The learned Counsel further pointed out that the business activities of the partnership had in fact stopped somewhere after 2003 itself and no business activities were carried out by such partnership firm. The learned Counsel further pointed out that as such the alleged claim of the applicant is hopelessly barred by limitation and, consequently, the question of examining any different claim put up by the applicant would not arise at all. The learned Counsel further pointed out that the application under Section 9 of the said Act of 1996 filed by the applicant came to be dismissed on the ground that the applicant was not entitled to file such application as the alleged claim was time barred. The learned Counsel, as such, submits that the application be rejected.

4. I have considered the submissions of the learned Counsel appearing for the respective parties. The fact that the partnership agreement dated 1/04/2002 has an arbitration clause has not been disputed. It is contended by the applicant that the claim arises from such partnership agreement. The fact that the partnership has not been duly dissolved in terms of the Partnership Act, 1932 is also not disputed. Based on such admitted fact, I shall proceed to examine the objections raised by the learned Counsel appearing for the respondents. The contention of the respondents that no business activity was being carried out by the partnership firm since the time

the partnership agreement was executed is a matter which would have to be adjudicated by the Arbitrator on its own merits. So also, the claim of the respondents, that all the claims put forward by the applicant are time barred is an arguable point considering that the application filed by the applicant is on the premise that the partnership agreement is still in force. The applicant has also not clearly spelt out the specific claims against the respondents herein to examine the contention of Mr. G. Agni that the claims put up by the applicant are hopelessly time barred. In such circumstances, the issue with regard to the contention of the respondents that the claim is time barred is left open to be examined by the Arbitrator on its own merits. Keeping all the defences of the respondents open to be examined by the Arbitrator on its own merits, I find that the applicant is entitled to appoint an Arbitrator in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996.

5. Hence, with the consent of the learned Counsel the following order is passed.

O R D E R

(i) Advocate Mr. G.U. Bhobe, having office at Navelkar Building, Panaji is appointed as sole Arbitrator to adjudicate the dispute between the parties.

(ii) Needless to say all the contentions of the both the parties are kept open.

F. M. REIS, J.

NH