

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.59 OF 2014

Atul Manikchand Katariya

.. Petitioner

vs.

The Municipal Corporation of the
City of Pune & Ors.

.. Respondents

Mr.Jayesh Kocheta for the petitioner

Mr.R.S.Khadapkar for the respondent nos.1 to 5

CORAM : K.K.TATED, J.
DATED : 11/12/2015

PC:

1 Heard the learned counsel for the parties.

2 Though the respondent are duly served, there is no Affidavit-in-Reply filed on behalf of them.

3 This petition is under section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator as per agreement dated 11.07.2008 between the petitioner and respondent.

4 Advocate for the petitioner submits that there was dispute between the parties. Hence, petitioner through his advocate issued notice dated 14.10.2011 to the respondents for appointment of

Arbitrator as per agreement dated 11.07.2008. He submits that though the notice was duly served on the respondent, they failed to appoint Arbitrator according to law. Hence, the petitioner filed the present petition in this court immediately on 14.4.2013. He submits that the matter was adjourned from time to time for settlement. But till today respondent failed to settle the matter. The learned counsel for the petitioner submits that considering these facts, this Hon'ble Court be pleased to appoint Arbitrator as per agreement dated 11.07.2008.

5 On the other hand, the learned counsel for the respondent submits that they require some time to take instruction whether it is possible to settle the matter out of court. It is to be noted that the present petition was filed by the petitioner in this court on 14.4.2013. Thereafter, from time and again at the request of advocate for respondent, matter was adjourned to take instruction whether it is possible to settle the matter out of court. On 22.11.2015 at the request of advocate for respondent this court granted two weeks time as a last chance, to explore the possibility of settlement. In spite of that, advocate for the respondent seeks further time. Hence, his request is rejected.

6 It is to be noted that our Hon'ble Court in the matter of Naginbhai C. Patel vs. Union of India¹ held that if the appointment of arbitrator is not made within a reasonable length of time, the Chief Justice or the person designated by him may himself make the appointment. Paragraph 4 reads thus:

“4 I have carefully considered the rival submissions. In

1 1999(2) BCR 189

the instant case, the petitioner waited for 30 days from the date of demand for appointment of arbitrator and having failed to get response from the appointing authority within that period, approached the Chief Justice of this Court for appointment of arbitrator under sub-section (6) of section 11 of the Act. I do not find any infirmity in this action of the petitioner. The petitioner waited for 30 days from the receipt of request from the petitioner and on the failure of the appointing authority to appoint an arbitrator within such time, approached the Chief Justice under sub-section (6) of section 11 of the Act with a request to appoint the arbitrator. The absence of time limit in sub-section (6) of section 11 does not mean that the aggrieved party cannot request the Chief Justice or the person designated by him to take the necessary measure if no appointment is made by the appointing authority within a reasonable time. What is reasonable length of time will depend upon the circumstances of each case. If the appointment is not made within a reasonable length of time, the Chief Justice or the person designated by him may himself make the appointment. Ordinarily, 30 days should be reasonable length of time. Admittedly, this petition has been filed after lapse of 30 days from the receipt of demand by the respondents. That being so, no objection can be taken by the respondents to the filing of the present application. The purported appointment made by the appointing authority during the pendency of this application is no appointment in the eye of law. It is non est. In view of the

facts and circumstances set out above, in the instant case, it is for the Chief Justice or the person designated by him to make the appointment having due regard for considerations likely to secure the appointment of an independent and impartial arbitrator.”

7 Even the Apex Court in the matter of *Datar Switchgears Ltd. vs. Tata Finance Ltd. And Another*² held that if party having responsibility of appointing arbitrator does not do so within 30 days of demand being made by the other party, court can appoint any other person as Arbitrator. Paragraph 19 reads thus:

“19 So far as cases falling Under Section 11(6) are conceded - such as the one before us - no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed Under Section 11(4) and Section 11(5) of the Act. In our view, therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court Under Section 11, that would be sufficient. In other words, in cases arising Under Section 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not

2 (2000) 8 SCC 151

forfeited but continues, but an appointment has to be made before the former files application Under Section 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases. We do not, therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an arbitrator Under Section 11(6) is forfeited.”

8 Considering the principle decided by the Apex Court, this court have to appoint independent Arbitrator under section 11 of the Arbitration and Conciliation Act, 1996.

9 Considering the submissions made by the learned counsel for the petitioner and after going through the agreement dated 11.07.2008 and notice issued by the Advocate for the petitioner dated 14.11.2011, I am satisfied that the petitioner has made out a case for appointment of Arbitration. Hence, following order is passed:

a) Justice Dr.S.Radhakrishnan Retd.High Court Judge is appointed as Arbitrator having address as :

407, Gundecha Chambers,
Nagindas Master Road,
Fort, Mumbai

b) Registry is directed to inform the Arbitrator

about his appointment.

c) Petition stands disposed of accordingly.

d) Liberty granted to the petitioner to make appropriate application before the Registry to return the original documents if any filed.

(K.K.TATED, J.)