

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

ARBITRATION PETITION NO. 74 OF 2014

Mahendra s/o. Anantdas Soitkar	.. Petitioner
Vs.	
Kirloskar Brothers Ltd. & Anr.	.. Respondents

Mr. Uday S. Malte for the Petitioner.
None for the Respondents.

**CORAM : A.A. SAYED, J.
DATED : 17 APRIL 2015**

P.C.

1 This Arbitration Petition has been filed by the Petitioner essentially seeking appointment of a Sole Arbitrator as substitute in place of the earlier Arbitral Tribunal.

2 Despite being served, none appears on behalf of Respondent Nos.1 and 3. Respondent No.2 has been deleted from the array of parties.

3 The Dispute essentially relates to the claim of the Petitioner of Rs.13,42,100/- arising out of a works contract. The contract contained an Arbitration Clause. On 15 April 2009, the Petitioner invoked the Arbitration clause and appointed Mr. V.K. Deshpande as the Arbitrator. The

Respondent No.1 appointed Mr. Paranjape as the Arbitrator. The said Arbitrators appointed a 3rd Arbitrator Mr. P.K. Dhakephalkar as Chairman of the Arbitral Tribunal. On 24 July 2009, the Petitioner made an Application under Section 12 and 13 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as '1996 Act'). According to the Petitioner, Mr. Paranjape who was the Arbitrator appointed on behalf of the Respondent No.1 had settled and received fees from the Respondent in respect of the Arbitration and this fact was not disclosed by the Arbitrator Mr. Paranjape. The Petitioner by further Affidavit alleged that the Arbitrator Mr. Paranjape nominated by the Respondent was a retainer of the Respondent No.1 and he had received certain amounts from the Respondent No.1, the quantum and dates whereof were set out in the said Affidavit. On 26.12.2009 the Arbitrators Mr. V.K. Deshpande and Mr. Dhakephalkar (Chairman) withdrew from the panel of Arbitrators. On 26.01.2010 the Petitioner appointed Mr. M.N. Godbole as Arbitrator in place of Mr. V.K. Deshpande. On 22.06.2010 both the Arbitrators viz. Mr. M.N. Godbole and Mr. Paranjape appointed Mr. Justice Kakade, former Judge of this Court, as the 3rd Arbitrator and as Chairman of the Arbitral Tribunal. It appears that thereafter certain meetings were held under Chairmanship of Mr. Justice Kakade (Retd.). On 24.02.2012 Mr. Justice Kakade expired.

4 On 11.06.2012 the Petitioner communicated to both the Arbitrators to take further steps to appoint the 3rd Arbitrator and Chairman of the Arbitral Tribunal. On 05.07.2012 Arbitrator Mr. Godbole sent a letter to the Arbitrator Mr. Paranjape suggesting Mr. Justice S.R. Sathe (Retd.) as the 3rd Arbitrator and Chairman of the Arbitral Tribunal. On 01.08.2012, the Petitioner forwarded a copy of the account extract of Respondent No.1 along with his letter to the Respondent No.3 Mr. Paranjape who was the Arbitrator appointed by the Respondent No.1. The said letter alleged that there was certain justifiable doubts as to the independence and impartiality of Arbitrator Mr. Paranjape as the account extract of the Respondent No.1 indicates that certain amounts were paid by the Respondent No.1 to the Arbitrator Mr. Paranjape. There has been no further meetings after 24.02.2012 according to the learned Counsel for the Petitioner.

5 Learned Counsel for the Petitioner submitted that even after suggesting the name of Mr. Justice S.R. Sathe (Retd.) to be the 3rd Arbitrator and Chairman of the Arbitral Tribunal, Mr. Paranjape has not replied to the letter dated 05.07.2012 of Arbitrator Mr. Godbole accepting the name of Mr. Justice S.R. Sathe (Retd.) to be the 3rd Arbitrator. He states that for almost three years there has been no movement in the arbitration proceedings. He submitted that the claim of the Petitioner is

only about Rs.13 lacs and there is hardly any progress in the arbitration proceedings for the last 6 years and the arbitration proceedings have not moved an inch since the last about 3 years. He submitted that the Petitioner is unable to afford the fees of three Arbitrators.

6 The learned Counsel for the Petitioner further submitted that the Respondent No.1 has never come forward and denied that they had paid any amount to the Arbitrator Mr. Paranjape and the allegations made in the present Petition have remained uncontroverted by the Respondent No.1.

7 Having considered the facts and circumstances of the case and more particularly since the year 2009 there has been no substantial progress in the arbitration proceedings and without going into merits or otherwise of the allegations made by the Petitioner against Arbitrator Mr. Paranjape as also considering the quantum of claim, which is quite small, in my view, it would be appropriate that a sole Arbitrator is appointed to adjudicate the disputes and differences between the parties under 1996 Act. It is clarified that this Court does not approve of the conduct of the Petitioner in writing letters to the Arbitrator instead to making formal Application before the Arbitral Tribunal. Be that as it may, after considering the facts and circumstances of the case and taking an

overall view of the matter, I pass the following order :

Order

- i) Shri S.B. Panse, Vimal Nivas, Sudarshan Society, Model Colony, Behind Post Office, Canol Road, Pune 411 016, is appointed as the Arbitrator under the Arbitration and Conciliation Act, 1996 to adjudicate the disputes and differences between the parties.
- ii) It is made clear that the arbitration proceedings shall be continued from the last meeting.
- iii) Registry shall communicate a copy of this order to Mr. S.B. Panse alongwith a memorandum of address of the parties.
- iv) Parties to appear before the learned Arbitrator on 2 May 2015 at 10.00 a.m.
- v) Learned Counsel for the Petitioner states that he will also communicate this order to the Respondent No.1.

8 The Petition is disposed of in aforesaid terms.

(A.A. SAYED, J.)