

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 35 OF 2015

M/s. Pinxit Blue Advertising Pvt. Ltd.

..... Applicant

VERSUS

Vikas Swami & Ors.

..... Respondents

Mr.Prerak Sharma, i/b.Mr.Rakesh Pathak for the Applicant.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 22nd JULY, 2015

P.C.

Learned counsel appearing for the applicant tenders affidavit of service which indicates that respondents are served. None appeared for the respondents though served. No affidavit in reply is filed.

2. By this application filed under section 11(6) seeks appointment of arbitrator by invoking clause 4 of the Settlement Agreement dated 10th December, 2012.

3. The dispute arose between the parties. The applicant invoked the arbitration agreement vide their advocate's notice dated 24th November, 2014 and suggested names of three advocates and called upon the respondents to appoint one of them as the arbitrator. The respondent replied to the said notice through their advocate's letter dated 3rd January, 2015. In paragraph (2) of the said reply, the respondent has disputed the existence of the agreement dated 10th December, 2012 and refused to appoint an arbitrator.

4. Learned counsel appearing for the applicant invited my attention to the agreement dated 10th December, 2012 duly signed by both the parties and also the correspondence exchanged between the parties. Learned counsel also tenders a copy of the letter dated 10th June, 2013 which was sent by the respondents through their advocates in reply to the notice dated 31st May, 2013 addressed by the applicant under section 138 of the Negotiable Instruments Act, 1881. In paragraph (3) of the said reply, the respondent has contended that as per mutually agreed terms of settlement, all claims, disputes, controversies, disagreements, difference between the parties arising out of or in relation to or in connection with the said agreement or a breach thereof, shall be determined by the arbitration in accordance with the prevailing rules of Arbitration and Conciliation Act, 1996.

5. In my view, the arbitration agreement exist between the parties as recorded in clause (4) of the said agreement dated 10th December, 2012 duly signed by both the parties. The existence of the arbitration agreement is also admitted by the respondent themselves in their letter dated 10th June, 2013 sent through their advocates. Since the respondents have failed to appoint any arbitrator, this application under section 11(6) of the Arbitration and Conciliation Act, 1996 is maintainable.

6. Mr.Anoshak Daver, advocate having his address at 001, Blue Moon Chambers, Near Welcome Hotel, Nagindas Master Road, Fort, Mumbai – 400 001 is appointed as the sole arbitrator.

7. Arbitration application is disposed in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]