

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 178 OF 2014

Sagar Avenue – I Co-operative Housing Society Ltd. Applicant

VERSUS

M/s.S.V.Advertising & Ors.

..... Respondents

Mr.Makrand Bakore for the Applicant.

None for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 12th JUNE, 2015

P.C.

By this application filed under section 11(6) of the Arbitration and Conciliation Act, 1996 the applicant seeks appointment of arbitrator by invoking clause 25 of the agreement dated 1st June, 2007 entered into between the applicant and respondent no.1. The applicant also seeks appointment of arbitrator under the agreements dated 1st November, 2009 and 20th December, 2010 which are entered into between the respondent nos. 1 and 2 and respondent nos. 2 and 3 respectively.

2. It is not in dispute that the petitioner is not a party to the other two agreements which are between respondent nos. 1 and 2 and respondent nos. 2 and 3 respectively.

3. Dispute arose between the parties. The petitioner issued a notice on 14th February, 2014 calling upon all the three respondents to appoint an arbitrator. The petitioner sent a reminder to the respondents. Respondent nos. 2 and 3 did not give any reply. Respondent no.1 by their letter dated 28th March, 2014 refused to

appoint an arbitrator on various grounds including the ground that clause no.25 of the agreement was not valid and subsisting and there was no question of appointing any arbitrator under the said agreement. It is also contended in the said letter that there was no mention of a sole arbitrator in clause 25 of the said agreement. It is stated that the said agreement was between the proposed society and the 1st respondent and the same was not with the petitioner which is a registered society.

4. Learned counsel appearing for the applicant has tendered affidavit of service dated 22nd April, 2015 which indicates that the respondent nos. 2 and 3 are served. None appeared for the respondents though served. Affidavit of service insofar as respondent no.1 is concerned has been already filed. No affidavit in reply is filed by any of the respondents.

5. A perusal of clause 25 of the agreement dated 1st June, 2007 clearly indicates that the arbitration agreement exist between the petitioner and the respondent no.1. The said agreement was though executed by the petitioner which was a proposed society on the date of execution, the fact remains that the party to the said agreement has been subsequently registered under the provisions of Maharashtra Co-operative Societies Act on 1st February, 2010. In my view the applicant thus would be entitled to invoke the said arbitration clause recorded in clause 25 of the said agreement.

6. Insofar as other two agreements are concerned, those agreements are between the respondent no.1 and respondent nos. 2 and respondent nos.2 and 3 respectively. The applicant is not a party to any of those agreements.

7. In my view the applicant thus would not be entitled to invoke arbitration agreement if any, in those two agreements since the arbitration agreement recorded in agreement dated 1st June, 2007 does not stand incorporated in those two agreements. I am thus not inclined to refer the matter to arbitration against respondent nos. 2 and 3 in this application. I, therefore, pass the following order :-

Insofar as agreement between applicant and respondent no.1 is concerned, Mrs.Sunanda Kumbhat, Advocate, c/o. Room No.56, High Court Library is appointed as a sole arbitrator.

8. Application is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]