

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.67 OF 2013**

M/s. Ishita Cotton Industries Limited ...Petitioner

V/s.

M/s. Suminter India Organics Pvt. Ltd. (SIOPL) ...Respondent.

Mr. Sanjay Anabhawane i/b M/s. N.I. Bakali for the petitioner.

Mr. A. B. Dubey for the respondent.

CORAM : R.D. DHANUKA, J.

DATED : 24th AUGUST, 2015.

P.C.:

1. By this petition filed under sub section (1) of Section 34 of the Arbitration and Conciliation Act, 1996 the petitioner has impugned the arbitral award dated 16/7/2012.

2. The petitioner herein was the original respondent whereas the respondent was the original claimant in the original proceeding. The parties had entered into a leave and license agreement on 21/10/2011. Clause 14(b) of the said agreement provided that if any dispute or difference arises in connection with the interpretation or implementation of this agreement, then such dispute shall be referred to a sole Arbitrator mutually appointed by the Court or matter be referred to the appropriate court of law at Mumbai.

3. It is the case of the petitioner that the respondent never called upon him to appoint an arbitrator. On 12/4/2012, the petitioner came to know that the petitioner was served with copy of notice alongwith an application under section 17 of the Arbitration and Conciliation Act, 1996 that the respondent had unilaterally appointed

the learned arbitrator. On 12/4/2012, the petitioner raised an objection about unilateral appointment of the arbitrator by the respondent being contrary to the arbitration Agreement and requested the respondent to stop the arbitral proceeding as the same was totally unlawful and not binding on the petitioner. Copy of the same was forwarded to the learned Arbitrator.

4. The learned counsel for the petitioner invited my attention to the impugned award rendered by the learned Arbitrator and submits that the learned Arbitrator in the impugned award has referred to the objection raised by the petitioner about his appointment and is alleged to have rejected the said objection. He submits that no copy of such ruling by the learned Arbitrator has been served upon the petitioner. It is submitted on behalf of the petitioner that since the arbitrator was not appointed by consent of the petitioner, the learned arbitrator could not act as Arbitrator. Even if the petitioner would have refused to appoint the arbitrator the respondent was required to file an application under section 11(6) of the said Act and the learned arbitrator could not have been appointed unilaterally by the respondent. The learned arbitrator has rejected the said objection without any reasons. The learned counsel for the respondent could not justify the appointment of the learned Arbitrator unilaterally.

5. A perusal of the arbitration clause clearly indicates that the parties had agreed that in the event of any dispute or difference, such dispute shall be referred to a sole Arbitrator mutually appointed by the parties failing which the same shall be appointed by the Court. It is not in dispute that the respondent did not issue any notice to the petitioner

for nominating any arbitrator. The respondent unilaterally appointed the learned Arbitrator without issuing any notice. In my view, even if the respondent would have issued notice and if the petitioner would have not agreed to the name suggested by the respondent, the remedy of the respondent could be only by filing an application under section 11(6) of the said Act. Perusal of clause 14(b) of the Arbitration agreement shows that it does not vest any such right on the respondent exclusively to appoint an arbitrator. A perusal of the award indicates that the learned Arbitrator rejected the objection raised by the petitioner without rendering any reasons. In my view the learned Arbitrator acted without jurisdiction and thus the impugned award dated 16/7/2012 passed by the learned Arbitrator is set aside. At this stage parties have agreed to the appointment of Shri S. C. Naidu, Advocate as the Sole Arbitrator to adjudicate upon the dispute. It is ordered accordingly.

6. Arbitration Petition is disposed of in the aforesaid terms.

(R. D. DHANUKA, J.)