

IN THE HIGH COURT OF BOMBAY AT GOA**APPLICATION FOR APPOINTMENT OF
ARBITRATOR NO.1/2016**

M/s. Karnatak Cement Pipe Factory,
Engineers and Contractors, a
registered partnership firm, having
its Office at Industrial Estate,
Gokul Road, Hubli – 580 030
Now at Plot No.64B, Tarihal
Industrial Area, Tarihal, Hubli-580 026
through its Partners,
1) Mr. M. S. Bidasaria,
2) Mr. P. V. Patil.

..... Applicant.

V/s.

1) The Chief Engineer,
Public Works Department,
Government of Goa,
Altinho, Panaji, Goa 402 001.

2. The Executive Engineer,
Works Division XII (PHW-SWSP),
Public Works Department,
Government of Goa, S
anguem, Goa 403 704.

..... Respondents.

Mr. Premanand Anand Kholkar, Advocate for the applicant.

Ms. P. Bhandari, Additional Govt. Advocate for the respondents.

Coram :- F. M. REIS, J.

Date :- 11th February, 2016

ORAL ORDER

Heard Mr. P.A. Kholkar, learned Counsel appearing for the applicant and Ms. P. Bhandari, learned Additional Govt. Advocate for the respondents.

2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. It is pointed out by the learned Counsel that the Former Chief Justice of Gujrat High Court Shri G.D. Kamat was appointed as the Sole Arbitrator, who could not complete the arbitration. It is further pointed out by Mr. Kholkar, learned Counsel appearing for the applicant that as such, the applicant served a notice on the respondent dated 22/1/2015 for appointment of an arbitrator. The learned Counsel further points out that despite of the said notice, no arbitrator was appointed by the respondents which forced the applicant to file the above application.

3. Ms. P. Bhandari, learned Counsel appearing for the respondents points out that on 2nd February, 2016, an arbitrator has been appointed.

4. Mr. Kholkar, learning Counsel appearing for the applicant, however, in rejoinder points out that appointment of such an arbitrator does not fit within the provisions of law, as the arbitrator was appointed after the above application was filed.

5. Upon hearing the learned Counsel and on perusal of the record, it cannot be disputed that once the respondents had not appointed an arbitrator in terms of the arbitration clause within the notice period or at least before filing of the above application under Section 11(6) of the Arbitration and Conciliation Act, 1996, it is not open to the respondents to thereafter appoint an arbitrator and make the application infructuous. This Court, whilst disposing of Application for Appointment of Arbitrator Nos. 14 and 15 of 2014, by Order dated 5th May, 2015, has observed at para 13 thus :

“13. The Three Judge Bench of the Hon’ble Supreme Court in the Judgment reported in **2006(2) SCC 638** in the case of ***Punj Lloyd Ltd. vs. Petronet Mhb Ltd.***, followed the decision of the Apex Court reported in the case of ***Datta Switch Gears Ltd.*** (supra) and held that once notice period of thirty days had lapsed and the

party had moved to the Chief Justice under Section 11(6) of the said Act, the other party having a right to appoint an Arbitrator by the Arbitral Agreement, loses the right to do so. Thus, the right of the Respondent in the present case to appoint an Arbitrator in accordance with the Agreements when called upon ceases not on expiration of the period of thirty days from the date of the service of the requisition but continues till an application under Section 11(6) of the said Act is filed for Appointment of an Arbitrator and thereafter such right of the defaulting party stands forfeited where the present application was filed. On careful consideration of the provisions of Section 11 of the said Act, I am clearly of the opinion that under sub Section (6) of Section 11 of the Act, the Chief Justice or its designate should make the appointment himself and should not accept the claim, of the defaulting party to act in terms provided in the Agreement. Even an appointment of an Arbitrator made by such authority during the pendency of the application under Section 11(6) of the said Act, would be non-est.”

6. Mr. Kholkar, learned Counsel appearing for the applicant has

submitted that for the purpose of deciding the matter in controversy, a technical person would be appropriate and, as such, points out that on this Count, the arbitrator earlier appointed had delayed the proceedings. This contention cannot be accepted as, in case the arbitrator requires any technical assistance he can obtain such technical information by invoking Section 26 of the Arbitration and Conciliation Act, 1996.

7. Considering that it is not disputed that an arbitral dispute between the parties has to be adjudicated, I find that an arbitrator has to be appointed to adjudicate the dispute between the parties.

8. In view of the above, I pass the following Order :

Justice Shri A.P. Lawande, retired Judge of this Court is appointed as the sole arbitrator to decide and adjudicate the dispute between the parties.

Application stands disposed of accordingly.

F.M. REIS, J.

ssm.