

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 9 OF 2016

PRAVIN SURESH AGRAWAL.	... Applicant
Versus	
MR. VENKATESH PRABHU MONI.	... Respondent

Mr. Jagannath Jayant Mulgaonkar, Advocate for the Applicant.
Mr. C. Fonseca, Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 2nd September, 2016

P.C.

Heard Mr. J. J. Mulgaonkar, learned Counsel appearing for the Applicant and Mr. C. Fonseca, learned Counsel appearing for the Respondents.

2. This is an application to appoint an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

3. Mr. Mulgaonkar, learned Counsel appearing for the Applicant has pointed out that in terms of an Agreement executed between the parties dated 06.09.2010, the Respondent was supposed to deliver two flats to the Applicant. It is further pointed out that according to the Applicant, a total sum of Rs.32,42,000/- was paid by the Applicant to the Respondent. It is further pointed out that though the Applicant had terminated the Agreement and called upon the

Respondent to refund the total amount due, according to the Applicant, the total amount has not been refunded as, according to him, there is still an amount payable to the Applicant. It is further pointed out that as such, as the Respondent has not acceded to the terms of the termination letter, there is a dispute which has arisen between the parties which has to be adjudicated before an Arbitrator. Learned Counsel further pointed out that a notice was issued to the Respondent in terms of the Arbitration Clause and in view of the failure of appointing such Arbitrator, the Applicant has filed an application to appoint an Arbitrator.

4. Mr. C. Fonseca, learned Counsel appearing for the Respondent, has filed a reply to inter alia point out that in terms of the termination letter, the Respondent has refunded to the Applicant a total sum of Rs.32,00,000/- as full and final settlement of the claim of the Applicant. Learned Counsel further pointed out that as the Applicant had received the said amount and has acknowledged receipt of the said amount, the question of proceeding to appoint an Arbitrator is not at all justified. Learned Counsel further pointed out that as the Agreement has been terminated by accord and satisfaction between the parties, there is no arbitral dispute to be adjudicated by the Arbitrator. Learned Counsel in support of his submission has relied upon the Judgment of the Apex Court reported in 2011 (10) SCC 420 in the case of Cauvery Coffee Traders, Mangalor vs. Hornor Resources (Intern.) Co. Ltd.

5. I have carefully considered the submissions of the learned Counsel and have also gone through the records. The execution of the Agreement has not been disputed. The fact that there is an Arbitration Clause which would cover the dispute has also not been disputed. The only dispute raised is whether the termination has been accepted by accord and satisfaction? There are several disputes raised by the Applicant even in the amount paid by the Applicant to the Respondent. Apart from that, the records ex-facie do not disclose that there was any documentary evidence to suggest that the Agreement was terminated by accord and satisfaction. Whether the Applicant is estopped from claiming any further amount or the contention of the Respondent that the Agreement has been duly terminated by accord and satisfaction is a matter which would have to be adjudicated by the Arbitrator after hearing both the parties as this disputed question of fact cannot be examined in these proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996.

6. The Judgment of the Apex Court relied upon by the learned Counsel appearing for the Respondent, is not applicable to the facts and circumstances of the case. The fact that the Agreement also contemplates payment of interest also has not been disputed though the rate as mentioned therein is disputed by the learned Counsel appearing for the Respondent. Such disputes which arise based on the Agreement between the parties would have to be adjudicated by the

Arbitrator after hearing the parties in accordance with law.

7. In such circumstances, I find that the Applicant is entitled to appoint an Arbitrator to adjudicate the dispute arisen between the parties. Hence, I pass the following :

O R D E R

- (i) Mr. N. A. Britto, Retired Judge of this Court,
is appointed as the Sole Arbitrator to adjudicate
the dispute between the parties.
- (ii) All the contentions of both the parties on merits
are left open.
- (iii) Application stands disposed of.

F. M. REIS, J.

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