

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 19 OF 2016

Vitthal Nawandhar and anr.

... Petitioners

vs.

GDA Trusteeship Pvt. Ltd.

... Respondent

Mr. Abhijeet Marathe, Advocate for the petitioners.

Mr. Dhananjay Bhang, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 25th October, 2016

P.C. :

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('the Arbitration Act', for short) is for appointment of an Arbitrator to adjudicate the dispute with respondent no.1. The petitioners joined the services of the respondent by executing joint agreement dated 9th September, 2013 along with one Mr. Umesh Salvi, as a team. They were issued letters of appointment on the same day. It was agreed between the parties that, the petitioners along with Mr. Salvi shall do all the efforts to generate new/additional business for the company upto 31st March, 2017, as per the projection given in their proposal. Since the projection of business review in the next three years was the main guiding factor, the parties agreed that variation into the projection of more than 25% was not expected. The petitioners and Mr. Salvi in

turn were entitled to incentive paid jointly on the basis of cumulative gross realised by the receipts generated by the team. The management of the respondent was to take a quarterly review for the purpose of payment of incentive. The respondent reserved the right to revise the terms and conditions of the agreement as also terminate the agreement. Clause 15 provided that a dispute arising out of agreement shall be resolved amicably by mutual discussions and in case it was not resolved within one month either party had a right to refer it to the arbitration to a sole arbitrator acceptable to both the sides. The petitioners allege that though they along with Mr. Salvi were to work as a team, there was hostile environment created at the work place solely for the reason that the petitioners are not Maharashtrians. The petitioners allege that despite good performance shown by them their services were terminated on 9th September, 2015. They were offered salary of one month in lieu of the notice. The petitioners protested their termination and alleged that the termination has caused financial loss to them in addition to the loss of professional reputation and loss of future employment. By their advocate's letter dated 30th September, 2015, they made the following demands for each of them.

- (a) Rs.19,25,000/- being their respective aggregated monthly fixed and remuneration for the remaining term of employment.
- (b) Rs.35,03,944.20 ps. for each being the amount of incentive payable for the current financial year.
- (c) Rs.60,60,723.20 ps. for each being the amount of incentive payable for the financial year 2016-2017.

These amounts were claimed towards the financial loss caused in addition to the loss of professional reputation and loss of future employment. The notice was replied by the respondent by its advocate's letter dated 30th October, 2015. The respondent denied all the allegations and contended that the petitioners had made similar monetary claims while negotiating their resignation from service. It was also alleged that there was an attempt on the part of the petitioners to hijack the business of the respondent in Mumbai. The petitioners sent their rejoinder dtd. 17th November, 2015.

2 Next the petitioners, by their advocate's letter dtd. 9th December, 2015 invoked arbitration in terms of the arbitration agreement contained in Clause 15 of the agreement dtd. 9th December, 2013. The arbitration clause contained in the agreement reads as under:

“15 In case of any dispute arising out of this agreement, the same shall be resolved amicably by mutual discussions. In case, the same is not resolved within one month, either party shall have right to refer it to the Arbitration through sole Arbitrator acceptable to both the parties. The Arbitration will be governed by the Arbitration and Conciliation Act, 1996 and the place of Arbitration shall be at Pune. Each party shall equally pay for Arbitrators Fees and shall bear their own expenses”

3 The respondent opposes the application contending that there is no arbitration agreement between the parties as regards the termination, which is in fact covered by another agreement of the same date between the parties.

4 Perusal of the agreement relied upon by the petitioners shows that it makes no reference to the termination of the employment of the petitioners. This is seen to be included in another agreement between the parties of the same date. The petitioners were issued letters of employment, which specifically prescribed all the service terms and conditions for the petitioners. The terms include the date of appointment, key responsibility areas, other duties, salary and incentives and termination. The petitioners have accepted the terms and conditions by making endorsement to that effect on that letter and countersigning the endorsement. This constitutes another agreement between the parties, which contains no clause for arbitration. In the circumstances, it must be held that there is no arbitration agreement between the parties as regards the petitioners' termination from service. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]