

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [MCA] No.328 of 2016

(Mrs. Durga w/o Vijaykumar Laddha
 vs.
 M/s. Shivshakti Developers and another)

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : Z.A. HAQ, J.

DATE : 28th JUNE, 2016.

Heard Shri H.R. Gadhia, learned Advocate for the applicant and Shri N.G. Jetha, learned Advocate for non-applicant No.2.

None appeared for non-applicant No.1 on 17/06/2016. Today also, none appeared for non-applicant No.1 in the morning session, therefore, the matter was kept back. None appeared for non-applicant No.1, when the matter is called out in the afternoon session.

The applicant has filed this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying that an arbitrator be appointed to resolve the dispute between the parties.

The learned Advocate for the applicant has pointed out Clause-18 of the Partnership-Deed, dated 19/01/2010. Clause-18 provides that all disputes and questions which are raised during the continuation of the partnership or afterwards between the parties or their representatives shall be resolved by arbitration. The applicant

and the non-applicants are the partners of the partnership firm and as per the Partnership-Deed dated 19/01/2010, the partnership conducts its business at Nagpur. The cause of action has arisen at Nagpur and this Court has jurisdiction to entertain and decide the application.

The applicant had issued notice dated 13/10/2015 calling upon the non-applicants to provide the details of business of partnership concern and the accounts along with vouchers, balance-sheet, profit and loss accounts, bank statements, capital accounts from 2010 onwards. This notice was replied by the non-applicant No.1. In the reply, it was stated that entire assets of partnership firm were sold out with consent of the applicant.

The applicant issued another notice dated 10/12/2015 to the non-applicants stating that as a dispute had cropped up, Shri Ketan B. Dave, Advocate be treated as an arbitrator to resolve the dispute. The non-applicant No.1 received this notice, however, it is not replied. The non-applicant No.2 concurred with the suggestion of the applicant for appointing Shri Ketan B. Dave, Advocate as an arbitrator.

The facts of the case show that the claim of the applicant is a alive claim and cannot be said to be a stale claim.

In the above facts, the following order is passed :

- i. Shri R.O. Chhabra, Advocate is appointed as an arbitrator to resolve the dispute between the parties.

- ii. The applicant and non-applicant No.2 shall deposit Rs.20,000/- (Rupees Twenty Thousand) each with the Registry of this Court within four weeks towards the security for the fees of the learned Arbitrator. This amount shall be kept with the Registry of this Court till the arbitration proceedings culminate.
- iii. The applicant and non-applicant Nos.1 and 2 shall pay the fees of the learned Arbitrator directly.
- iv. The applicant shall deposit Rs.5,000/- (Rupees Five Thousand) with the Registry of this Court within four weeks towards the process charges.
- v. The learned Arbitrator shall pass orders regarding the liability of expenses to be borne by the applicant and non-applicant Nos.1 and 2.
- vi. The application is allowed in the above terms. In the circumstances, the parties to bear their own costs.
- vii. The applicant shall send copies of this order to non-applicant No.1 by R.P.A.D.

JUDGE

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