

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

ARBITRATION PETITION NO. 22 OF 2017

Shri Rounak Popatlal Shah

.. Petitioner

Vs.

Shri Amrutlal Khetmal Shah & Ors.

.. Respondents

Mr.Mayur Khandeparkar a/w. Ruturaj P. Pawar for petitioner.

Mr.Drupad S. Patil for respondent Nos.1 and 2.

CORAM : K.R.SHRIRAM, J.

DATE : 4TH OCTOBER 2017

P.C.

1 The petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the said Act). The petition was amended and provisions of Section 15 of the Arbitration and Conciliation Act were also inserted. The original prayer was to appoint one Mr.A.P. Pawar as Sole Arbitrator and the amended prayer is to appoint/substitute the Arbitrators and appoint either a sole Arbitrator or any other independent person as this Hon'ble Court deems fit and proper to be appointed for resolution of the disputes.

2 At the outset, application under Section 11 and Section 15 cannot go hand in hand. Section 11 provides for appointment of an Arbitrator as per the Arbitration Agreement. Section 15 applies to situation where the

mandate of the arbitrator has been terminated and for substitution of an Arbitrator.

3 Even though, the Apex Court in ***Yashwith Constructions (P) Ltd. Vs. Simplex Concrete Piles India Ltd.***¹ held that Section 15(2) contemplates appointment of the substitute arbitrator in all cases according to the rules that were applicable to the appointment of the original arbitrator being replaced, the Apex Court in ***Antrix Corporation Limited Vs. Devas Multimedia Private Limited***² held that the law is well settled that where an arbitrator had already been appointed and intimation thereof had been conveyed to the other party, a separate application for appointment of an arbitrator is not maintainable. Once the power has been exercised under the arbitration agreement, there is no power left to, once again, refer the same disputes to arbitration under Section 11 of the 1996 Act.

4 Petitioner and respondent nos.1 to 4 were Partners in respondent no. 5-Firm. Disputes arose between parties. Parties, thereafter, entered into Memorandum of Understanding (MOU) dated 22nd November 2013. The MOU provides that petitioner had filed an application under Section 9 of the said Act being Miscellaneous Application No.172 of 2013 in the Court of

1 (2006) 6 SCC 204

2 (2014) 11 SCC 560

District Judge, Kolhapur with regard to his 25% in the Partnership and during the pendency of this application in order to resolve the disputes a discussion was held and Shri Mohanlal Oswal and Shri Uttam Gandhi were appointed as Arbitrators. They have finally settled the accounts before them and parties arrived at settlement as stated in the MOU.

5 Shri Khandeparkar for petitioner submitted that the petitioner's case is that the MOU was arrived at on the basis of misrepresentation by respondent no.1 and respondent no.3 and therefore, cannot be binding upon petitioner. If that is the position, petitioner should be challenging the validity of the MOU in an independent forum in accordance with law. This is because there is no clause provided in the MOU for arbitration. There is no separate arbitration agreement also entered into referring all disputes and differences arising out of the MOU to be referred to arbitration. By no stretch of imagination, the MOU can be considered as an Award and therefore the provisions of the said Act cannot apply.

6 In the circumstances, petition stands dismissed.

(K.R. SHRIRAM, J.)