

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO. 247 OF 2016

Arrman Lifters	.. Applicant
Vs.	
M/s. Raj Kamal Builders Pvt. Ltd.	.. Respondent

Mr.Dinesh G. Mishra for applicant.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 9TH NOVEMBER 2017

P.C.

1 The counsel for applicant states that this Court had issued non-bailable warrant against Mr.Punyapal Surana, Director of respondent which was returned un-executed because the returnable date had passed. The returnable date was, by an order dated 16th December 2016, extended upto 20th January 2017. Applicant did not move the Court in time until today for extending the returnable date of non-bailable warrant. The counsel states that the matter was getting listed but due to paucity of time did not get called out.

2 Be that as it may, this is an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator. There is an affidavit of service of one Sahdev Panchal affirmed on 28th November

2016 in which it is stated respondent refused service. Refusal of service is good service.

3 Mr.Mishra states that in the quotation dated 11th January 2014 that applicant had given to respondent, copy whereof is at Exh.'B' to the application, Clause XII provides “*Arbitration : Any dispute in relation to this agreement will be subject to Mumbai Jurisdiction*”. The arbitration clause in my view is not happily worded. The counsel states this is an arbitration clause.

4 The counsel for petitioner relied on the following judgments of Courts in England :

1 *Mangistaumuniagas Oil Production Association Vs. United World Trade Inc.*¹

2 *Tritonia Shipping Inc. Vs. South Nelson Forest Products Corporation*²

to submit that when the nomenclature of the clause even if it only states “arbitration” means that the parties have agreed that if any dispute arises between them under the contract, that dispute should be referred to arbitration rather than to the Courts. Mr. Mishra states that the words used '*Any dispute in relation to.....will be subject to Mumbai Jurisdiction*'

1 Lloyd's Law Reports [19950 Vol. I 617

2 Lloyd's List Law Reports [1966]Vol.1 114

only means that the seat of arbitration will be Mumbai and any dispute arising out of to the arbitration proceedings will be in Mumbai.

5 Respondent has not replied to the communication invoking arbitration. Respondent has not filed any reply to this application though served.

6 I would agree with Mr.Mishra. The fact that the clause uses the word “arbitration”, in my view, should be considered to mean that parties have agreed that if any dispute arises, it should be referred to arbitration. Otherwise there is no reason to use the word “arbitration” in a purely jurisdiction clause. Respondent has accepted the proposal of applicant in its letter dated 20th January 2014.

7 In the circumstances, in my view, Clause XII of the communication dated 11th January 2014 should be read to mean that have parties have agreed under the contract that dispute should be referred to arbitration other than to the Courts.

8 Therefore, the following order is passed :

- (i) Ms. Aditi Pawar, an advocate practicing in this Court,

having office address at C/o. Mr.Rahul Narichania, Senior Advocate, 110, Yusuf Building, M.G. Road, Fort, Mumbai 40001, Mobile No.91580033228, Email Id : pawaraditi5@gmail.com is appointed as sole Arbitrator to arbitrate on the disputes/differences arising out, in connection with and relating to the quotation/proposal reference AL/RKBPL/Q/13-14 dated 11th January 2014 read with respondent's letter dated 20th January 2014 including counterclaim, if any.

(ii) The fees, administrative expenses, typing charges and venue expenses of the Arbitrator shall be shared equally between parties, i.e., 50% by petitioner and 50% by respondent to the arbitration proceedings and the same will be costs in the arbitration proceedings.

(iii) Within four weeks of receiving a communication from the advocate for petitioner and/or respondent, the Arbitrator shall give in writing, to advocate for petitioner and advocate for respondent, disclosure as required under Section (11)(8) read with Section 12(1) of the said Act.

(iv) Applicant to forward a copy of this order to respondent as well.

9 Application accordingly disposed.

(K.R. SHRIRAM, J.)