

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

**ARBITRATION APPLICATION NO.252 OF 2016
WITH
ARBITRATION PETITION NO.903 OF 2016**

Rohit Bal Designs Pvt. Ltd.)....Applicant/petitioner
V/s.

Ramesh Kumar Overseas Pvt. Ltd.)....Respondent

Mr.Zal Andhyrujina a/w Mr.Kunal Dwarkadas a/w Mr.Kunal Parekh
i/by M/s.Thakore Jariwala & Associates for applicant/petitioner.
None for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 16.11.2017

P.C.:-

1 When the Arbitration Petition No.903 of 2016 filed under Section 9 of the Arbitration and Conciliation Act 1996 (the said Act) was taken up for hearing on 29.4.2016, a statement was made by respondent that status-quo in respect of suit premises shall be maintained and the termination notice dated 4.2.2016 shall not be given effect upto 6.5.2016.

2 Mr.Dwarkadas for petitioner states that statement was subsequently extended by an order dated 5.5.2016 and petitioner is still in possession of the premises. Subsequently respondent has filed an affidavit in reply. It is the stand of the respondent that petitioner

having pleaded that though the agreement is referred to as franchise agreement but is akin to be a leave and license agreement, the dispute is not arbitrable. Mr.Dwarkadas submits that this order be continued to be decided by the Arbitrator finally, since petitioner has also taken out an application under Section 11 of the said Act and it would serve no purpose keeping this application pending.

Mr.Dwarkadas states that respondent has been served this application and relies upon an affidavit of service of one Ganesh Vaman Jadhav affirmed on 15.10.2016 confirming service on 1.9.2016. Nobody has entered appearance for respondent nor filed any affidavit in reply opposing the application. Mr.Dwarkadas states that even to the notice invoking arbitration dated 22.6.2016, copy whereof is at Exh.U to the petition, there is no response. Mr.Dwarkadas states that nobody has even addressed any communication to his instructing advocate with regard to filing any Vakalatnama.

3 Arbitration clause-13 of the agreement reads as under :-

“13. ARBITRATION :

All disputes and differences whatsoever arising out of or in connection with this agreement and which arise either during the continuance this Agreement or afterwards between the parties shall be referred to arbitration, in accordance with the provisions of the Arbitration and

Conciliation Act, 1996, or any other subsisting statutory modifications thereof for the time being in force. The arbitration tribunal shall consist of a sole arbitrator to be mutually agreed upon by the parties. The venue of Arbitration shall be Mumbai.”

4 I am satisfied that there is an arbitration agreement. I also agree with Mr.Dwarkadas, that the arbitrator can decide whether the order dated 5.5.2016 can be continued, modified or recalled. The arbitrator can decide this petition as an application under Section 17 of the said Act.

5 In the circumstances, the statement recorded on 29.4.2016 r/w order dated 5.5.2016 is extended until the arbitration proceedings are concluded.

6 Further, following order is passed :-

ORDER

(a) Ms.Sowmya Shrikrishna having her office at C/o. Mr.Virag Tulzapurkar (Sr.Advocate), 20-E, Examiner Press Building, 2nd floor, Dalal Street, Mumbai-400 001, Tel No.022-22675783, Mobile No.9821366813, is appointed as sole arbitrator to arbitrate the disputes/differences including counter claim, if any, arising out of or relating to or in connection with the agreement dated 29.4.2013

between the parties ;

(b) The fees, administrative expenses, typing charges and venue charges shall be shared equally between the parties and the same will be cost in the arbitral proceeding ;

(c) Within 3 weeks of receiving a copy of this order, either from the advocates for petitioner or for respondents, the learned Arbitrator shall file with the parties, disclosure in writing as required under Section 11(8) read with section 12(1) of Arbitration and Conciliation Act 1996;

(d) A copy of this Petition No.903 of 2016 and reply therein be filed with the arbitrator who shall consider the same and pass further orders including confirming or recalling or modifying the order dated 5.5.2016. Parties are at liberty to file further affidavits and documents before the arbitrator ;

(e) All rights and contentions of the parties are kept open including as to whether the dispute is arbitrable.

(f) Both, Application and Petition accordingly stand disposed.

(K.R.SHRIRAM,J)