

IN THE HIGH COURT OF BOMBAY AT GOA

***APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO. 14 OF 2017***

Sheik Shabbir

... Applicant

Versus

Nishant Infratech Pvt. Ltd., & Ors.

.... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Applicant.

Mr. S. Mahambrey, Advocate for Respondent No.1.

Coram : N.M. Jamdar, J.

Date : 28 September 2018.

P.C.:

Heard the learned counsel for the parties.

2. The Applicant and the Respondents had entered into an agreement for development and disposal of the property. On 1 September 2012, the Applicant sought to develop the property owned by the Respondents. The agreement dated 1 September 2012 contains an arbitration clause which reads as under :

“That in case any dispute, difference or questions which may arise at any time hereafter between the Landlords, the Confirming parties and the Developer touching the true construction of this agreement or the rights and the liabilities of the parties hereto shall be referred to the decision of the arbitrator as agreed upon between the parties and the award of the arbitrator shall be binding on both the parties.”

3. A dispute arose between the parties. The Applicant filed a Special Civil Suit bearing No.10/2015 in the Court of the Senior Civil Judge, Bicholim. The suit was for specific performance. In the said suit, the Respondent No.1 filed an application for reference of the dispute to the arbitration under the provisions of Section 8 of the Act of 1996. The Respondent No.1 referred to the clause 21 of the agreement and stated that since the dispute has arisen in relation to the agreement as per the clause 21, the proceedings in the suit need to be stayed and the parties need to be referred to the arbitration. This application was filed on 2 September 2015. The learned Senior Judge by order dated 20 June 2016, allowed the application holding that the case is made out for reference of the dispute to the arbitrator and the parties were directed for arbitration.

4. The Applicant thereafter gave notice of appointment of

Arbitrator to the Respondents. The Respondent No.1 replied objecting to the appointment of Arbitrator, going back on its own application. The Applicant then approached the learned Civil Judge, where the suit was stayed, for appointment of an Arbitrator. The learned Civil Judge by the order dated 10 April 2017 holding that an order under Section 8 is already passed and the parties have been referred to for arbitration and he does not have powers to appoint an Arbitrator under Section 11 of the Act of 1996, proceeded to dismiss the suit.

5. Thereafter, the present application has been filed. Notices were issued and the Respondents have been served. Heard the learned counsel for the parties. Reply is filed on behalf of the Respondent No.1 taking various objections regarding the registration of the document and the sufficiency of stamp. The learned counsel for the Respondent No.1 has relied upon a decision in the case of *SMS Tea Estates Pvt. Ltd. Vs Chandmari Tea Co. Pvt. Ltd.*¹

6. In the present case, the parties have already agreed to resolve the dispute through arbitration process and an order under Section 8 referring the parties to the arbitration has been passed by the

¹ 2011 LawSuit (SC) 753

Civil Court where the dispute was pending. None of the parties have challenged the order passed under Section 8. Therefore, there is an effective reference of the parties to the arbitration. Without challenging the order referring the parties to the arbitration made on its own application, the Respondent No.1 cannot now oppose appointment of an Arbitrator. The arbitration clause contain an intention of the parties to resolve the dispute through arbitration. There is a valid reference to the arbitration by an order passed under Section 8 of the Arbitration Act. The suit is also disposed of. If the contentions raised by the Respondent No.1 are allowed at this stage, it will defeat the very purpose of the Act of 1996 and also will make the provisions of Section 8 of the Act redundant.

7. In these circumstances, the application of the Applicant will have to be allowed. As regards the appointment of the Arbitrator is concerned, the learned counsel for the parties suggest Mr. Pramod Kamat, retired District Judge as an Arbitrator.

8. The Arbitrator will accordingly file an affidavit of disclosure within a period of two weeks. The disputes between the parties arising from the agreement dated 1 September 2012 are referred for arbitration to Mr. Pramod Kamat, retired District Judge.

The fees and cost of the Arbitration will be shared equally by the parties subject to the outcome of the Arbitration.

9. The application is disposed of in the above terms. In case the affidavit of disclosure is not filed within a period of two weeks, the matter will be listed on board under the caption "For Directions".

N.M. Jamdar, J.