

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 151 OF 2018

Mahesh Gupta.

...Applicant

Versus

1.Ashok Gupta & Anr.

...Respondents

Mayank Bagla with Deepali Bagla I/b. Bagla & Associates, for the Applicant.

CORAM : G.S. KULKARNI, J.**DATE : 17th DECEMBER, 2018**

P.C:

1. Heard the learned Counsel for the applicant. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). By an order dated 20 January 2017 passed in Suit no.26 of 2017, by consent of the parties the Court had appointed Mr.Prateek Seksaria, Advocate as a Sole Arbitrator to decide all the disputes which are subject matter of the said suit. The case of the applicant is that the learned proposed arbitrator appointed under the order passed by this Court, owing to personal difficulty expressed his inability to act as an arbitrator. The relevant submissions are made in paragraph 4 of the application. The applicant therefore, filed Notice of Motion No.449 of 2017 in the said suit for substitution /appointment of

new arbitrator. The said notice of motion was withdrawn with liberty to file the present application. It is on this background, the applicant is before the Court making the following prayers:-

“(a) That his Hon'ble Court be pleased to substitute/appoint the Sole Arbitrator, with a new Arbitrator in terms of the Order dated 20th January,2017.”

2. The respondents are served, however neither they are represented by an advocate nor they are personally present. There are two affidavits of service dated 7 December 2018 and 10 December 2018 as placed on record.

3. Respondent no.2 has filed a reply affidavit opposing the application. A perusal of the affidavit indicates that mostly the grievance of respondent no.2 is on the merits and it cannot be treated as any acceptable ground of opposition to the present application under Section 11 of the Act.

4. The learned Counsel for the applicant states that also reply affidavit was served on his client by respondent no.2 which was in fact forwarded by respondent no.1 by e-mail dated 15 December 2018. However, it appears that this reply is not placed on record by respondent no.2. The dispute appears to be clearly a family dispute as

arisen between the parties in regard to the family arrangement /settlement in question.

5. Having heard the learned Counsel for the applicant and having perused the reply affidavits, I am of the opinion that the application is required to be allowed by appointing an arbitrator to arbitrate the disputes between the parties. Accordingly, the following order:-

ORDER

(I) The Court appoints Mr.Hormaz Daruwalla, Advocate of this Court as the prospective arbitrator to arbitrate the disputes and differences between the parties which are subject matter of this application.

(II) The learned arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act,1996, to the Prothonotary and Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties.

(III) All contentions of the parties on merits of the dispute are expressly kept open.

6. The Arbitration Application is disposed of in the above terms. No costs.
7. Office to forward a copy of this order to the learned Arbitrator.

[G.S. KULKARNI, J.]