

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION APPLICATION NO.235 OF 2018**

B.H.Basha s/o. Banasandhra Haneef. ...Applicant
Versus
M/s.Showmen International. ...Respondent

Mr.Anand Mishra I/b. Mr.A.M.Saraogi, for the Applicant.

None for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 17th DECEMBER, 2018

P.C:

1. Heard the learned Counsel for the applicant. None appears for the respondent though served. The learned Counsel for the applicant has placed on record two affidavits of service one dated 7 September 2018 and another dated 11 December 2018, both of Mr.Santosh Kumbhar, clerk of the Advocate. In the first affidavit it is stated that when the deponent visited the respondent's premises to effect service, it was found that the premises were sealed and a notice was also pasted on the shutter of the said premises. Photograph of the same is annexed at Exhibit A, page no.3 of the affidavit. It is further stated that service was also sought to be effected by a registered A.D. in a packet containing letter dated 25 August 2018 and copy of arbitration

application to the respondent forwarded on 30 August 2018. The learned Counsel for the petitioner states that packet has returned unserved with a remark of the postal department that "Intimation is posted".

2. In the second affidavit of service dated 11 December 2018 again the deponent has reiterated that the premises were locked and shutter of the premises were sealed by some authority, photographs are also annexed to the affidavit.

3. On the above background, the hearing of the present application is taken up.

4. It is the case of the applicant that the disputes and differences have arisen between the parties under the Distribution Agreement dated 18 February 2013. The arbitration agreement is at clause 15.1 which reads thus:-

15. Dispute Resolution

15.1 The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement including the existence, validity interpretation, performance, termination or breach thereof shall by arbitration only if PRODUCER at its sole discretion decides to settle the in the alternative PRODUCER may also approach the overflow share such any dues or balance consideration amount or .."

5. It is the case of the applicant that the respondent had produced a Hindi feature film titled as 'Zila Ghaziabad' and the distribution rights of the said film were assigned to the applicant under the said agreement

dated 18 February 2013. The applicant as per the said agreement had paid an amount of Rs.90 lakhs as and by way of refundable advance to the respondent, as also further expenditure was incurred for release of the said film. It is stated that the said film was not successful and the applicant was entitled to claim a refund of Rs.82,25,740/-.

6. The applicant has averred that the respondent had issued certain cheques in favour of the applicant, however the said cheques were returned with remark "the payment is stopped by the drawer". In this regard necessary proceedings were adopted by the applicant under the Negotiable Instrument Act before appropriate forum at Bangalore. It is stated that the respondent responded to the notice of the applicant's advocate by his advocate's letter dated 15 April 2014 denying the liability. Thereafter the applicant by his Advocate's letter dated 5 June 2018 invoked the arbitration agreement calling upon the respondent to appoint an arbitrator as set out in paragraph 6 of the said notice. However, no response, hence, the present application has been filed by the respondent.

7. Having heard the learned Counsel for the applicant and having perused the documents on record in the above circumstances, it is in the interest of justice that the Court appoints an arbitrator to adjudicate the disputes between the parties which have arisen under the agreement dated 18 February 2013. Accordingly, the following order:-

ORDER

(I) The Court appoints Mr.Swanand Ganoo, Advocate of this Court as the prospective arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 18 February 2013.

(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 disputes are expressly kept open.

8. The Arbitration Application is disposed of in the above terms. No costs.

9. Office to forward a copy of this order to the learned Arbitrator.

[G.S. KULKARNI, J.]