

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION (ARBN) NO.1013 OF 2017

M/s Rai Udyog Ltd. Thr. Authorised signatory Abdul Hafeez Sheikh Sulemaan, Mahal, Nagpur
-vs-

Manorama d/o Shravanji Khorgade, Nandanwan Lay-out Nagpur.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Jaiswal, Advocate for applicant.
Shri S. P. Kshirsagar, Advocate for non-applicant.

CORAM : A.S.CHANDURKAR, J.
DATE : July 26, 2018

This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, the said Act) seeking appointment of sole Arbitrator.

On behalf of the applicant it is submitted that on 26/04/2011 the parties entered into an agreement for sale of an apartment on the first floor of the building being constructed by the applicant. In that agreement Clause-30 contains the arbitration clause and therefore as disputes between the parties have arisen it is necessary to appoint an Arbitrator. It is submitted that since 18/03/2011 demands are being made to the non-applicant to pay the balance consideration and despite that said amounts have not been paid. Reference is also made to the demand letter at Annexure-II dated 05/07/2017 and it is submitted that the present application is therefore filed within limitation.

The non-applicant has filed reply opposing the prayer. It is submitted that as per the cause of action pleaded in paragraph 14 of the application the same is barred by limitation. Reference is made to the judgment of the Honourable Supreme Court in *Punjab State and Ors. v. Dina Nath Executive Engineer, Anandpur Sahib Hydel Construction Division AIR 2007 SC 2157*. It is thus submitted that as the disputes arose initially in the year 2011, present proceedings are not maintainable.

In reply it is submitted that the cause of action arose on 29/07/2017 when the applicant gave his written statement before the police Authorities and hence the proceedings are within time.

Heard the learned counsel for the parties and perused the documents on record.

The agreement in question is dated 26/04/2011 and as per Clause-30 the parties have agreed to refer their disputes to the sole Arbitrator. The documents indicating the reminders issued to the non-applicant are of the year 2011 and 2012. In paragraph 14 of the application it is pleaded that the cause of action arose on 25/02/2011, 18/03/2011, 09/08/2011, 03/04/2012 and 05/04/2012. Further it also arose on 10/07/2012 when the applicant replied to the letter dated 25/05/2012 issued by the non-applicant. The aforesaid indicates that in the year 2012 there was exchange of letters between the parties giving rise to the cause of

action. In the light of law laid down in ***Punjab State and ors.*** (supra) the application in question is required to be filed within a period of three years when the right to apply accrued. In the light of averments in paragraph 14 that right is stated to have accrued in 2011 and 2012. Mere issuance of written statement on 29/07/2017 would not extend the period of limitation especially when the same is a letter of demand.

In view of aforesaid, present proceedings are barred by limitation and hence not entertained.

Misc. Civil Application is disposed of.

JUDGE

Asmita Adwait Bhandakkar Digitally signed by Asmita Adwait Bhandakkar
Date: 2018.07.27 10:53:46 +0530