

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.138 of 2013

ORDER:

This is an application seeking appointment of an Arbitrator and for requisite measure in terms of the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A&C Act').

2. Heard the learned counsel for the parties in the light of the pleadings on record.

3. The existence of an arbitration agreement is not in dispute. The existence of disputes as between the parties is on record in the form of pleadings. However, the respondent has contended that she has been described as a fraud. If one were to advert to the legal notice, dated 13.09.2011, referred to in the counter affidavit of the respondent, it says that the respondent had been trying to play fraud. I am of the view that such statement does not amount to even an allegation of fraud in relation to the contract as would make the contract itself void in terms of the provisions of the Contract Act. Therefore, the reference made by the learned counsel for the respondent to the decisions of the Apex Court in **Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak**¹ and **N.Radhakrishnan v. Maestro Engineers**² does not rule out the eligibility of the applicant to insist on due measure in terms of Section 11 of the A&C Act.

¹ AIR 1962 SC 406

² (2010) 1 SCC 72

4. Applying the ratio of the judgment of the Apex Court in **State of Goa v. Praveen Enterprises**³, wherein the distinction between Section 11 and Section 8 of the A&C Act has been explained, the jurisdiction under Section 11 does not include the adjudication of disputed questions of fact. Having noticed the existence of an arbitration agreement and as no vitiating element in terms of the A&C Act is demonstrated as regards that arbitration agreement, this Arbitration Application is eligible to succeed, without expressing anything on the rival claims.

5. In the result, the Arbitration Application is allowed appointing an Arbitrator.

6. Accordingly, Sri V.V.Raghavan, Retired District and Sessions Judge, is appointed as Arbitrator to arbitrate on the disputes between the applicant and the respondent, including the claims and counter claims of both sides. The said Arbitrator shall enter on reference and proceed with, as enjoined by the A&C Act.

No order as to costs. Miscellaneous applications, if any, pending in the Arbitration Application, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

28.09.2018
vs

³ (2012) 12 SCC 581