

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBR No. 31 of 2018**

- Smt. Sunita Vishwakarma, W/o Shri Anil Vishwakarma, Aged About 48 Years, R/o H.No. 23A, South Park Avenue Street, Sector 5, Bhilai, District Durg Chhattisgarh.

---- Petitioner

Versus

1. Smt. Sandhya Sancheti, W/o Shri Dinesh Sancheti, Aged About 48 Years, R/o 26/4, Gurudwara Road, Nehru Nagar, District Durg Chhattisgarh.
2. M/s S.S Bricks Having Its Registered Office At 26/4, Gurudwara Road, Nehru Nagar (W), Bhilai, District Durg Chhattisgarh, Through Its Partner Smt. Sandhya Sancheti, W/o Shri Dinesh Sancheti , Aged About 48 Years, R/o 26/4, Gurudwara Road, Nehru Nagar, District Durg Chhattisgarh.

---- Respondents

For Petitioner : Ms. Aditi Singhvi, Advocate

For Respondents : Shri Siddharth Rathod, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/08/2019**

1. Heard.
2. The present petition is for appointment of Arbitrator under Section 11 (6) of Arbitration and Conciliation Act, 1996.
3. It is contended that the petitioner and the respondents entered into an agreement of partnership deed on 01/07/2013, which was notarized on 23/07/2013 and according to clause 24 of the said agreement, in case of any dispute between the parties it shall be referred to an Arbitrator nominated with the consent of all partners as per the provisions of

Indian Arbitration Act.

4. Learned counsel for the petitioner submits that the notice was issued to the petitioner on 21.08.2018 wherein the reference of agreement dated 23.07.2013 was made which was the date on which the agreement was notarized and despite the notice served to the respondent, the Arbitrator was not appointed. It is stated that the dispute is internal dispute between the partners of the firm for which an agreement was executed as Annexure P-4. It is submitted by the learned counsel for the petitioner that Arbitrator may be appointed since the dispute is existing between the parties and the issue may be adjudicated.
5. Per contra, learned counsel for the respondent would submit that the petitioner has referred to agreement dated 23.07.2013 and virtually wants appointment of Arbitrator for subsequent agreement which was entered on 01.07.2013 wherein certain monetary transaction was agreed to be exchanged between the parties. It is stated as per Section 7 (5) of the Act 1996 only the petitioner can seek appointment of Arbitrator, and the agreement for which the appointment is sought for do not contain Arbitration clause as such the arbitrator can not be appointed.
6. Perused the documents and heard the learned counsel for the parties.
7. Perusal of the documents along with the petition shows that initially an agreement in between the petitioner and the respondent was entered on 01/07/2013 which was notarized on 23.07.2013, which is a deed of partnership, Clause 24 of the agreement purports that in case of dispute between the parties, it shall be referred to Arbitrator nominated

with the consent of both the parties as per the provision of Indian Arbitration Act. The petitioner as appears that has issued a notice Annexure P-3 wherein reference of agreement dated 23.07.2013 is made which is the date of notarization and the appointment of Arbitrator was sought for. The said notice was received by the respondent. The another agreement is on record which is dated 01/07/2013 which purports that that monetary transaction to be exchanged in between the parties. In any case, if the dispute has erupted in between the partners as per the original agreement which is the nucleus of the issue, then in such case the dispute inter se between the partners are to be resolved through an Arbitrator. As per the arbitration agreement clause 24, objection of the respondent that subsequent agreement do not contain any arbitration clause, I am not impressed by such agreement. The original agreement by which the parties joined hands is dated 01/07/2013 which was notarized on 23/07/2013. Consequently the subsequent agreement wherein certain monetary exchange was scribed would not over ride the clause 24 of the original agreement of partnership. The pith & substance of issue only emanate from the dispute inter-se between partners.

8. Perusal of the document shows that despite the notice, the respondents have not appointed any arbitrator. The defence of respondents cannot be accepted as it not be an arm twisting method and allowed. Accordingly in order to resolve the dispute between the parties Shri Pradeep Kumar Dave, retired District Judge is appointed to arbitrate the dispute.

Sd/-

(Goutam Bhaduri)
Judge