

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CIVIL REVISION APPLICATION NO. 5 AND 15 OF 2019**

**CIVIL REVISION APPLICATION NO.5 OF 2019**

Raymond Desa ... Applicant

Versus

Osric Cabral & 10 Ors. ... Respondents

Mr. Shailesh Redkar, Advocate for the Applicant.

Mr. D. Vernekar, Advocate for the Respondent no.1.

Mr. Jatin Ramaiya, Advocate for the Respondent Nos.3, 8 and 10.

Mr. Ravi Gawas, Advocate for the Respondent nos.4 and 5.

**A N D**

**CIVIL REVISION APPLICATION NO.15 OF 2019**

Sanjeev Ramakant Naik & 2 Ors. ... Applicants

Versus

Osric Cabral & 8 Ors. ... Respondents

Mr. Jatin Ramaiya, Advocate for the Applicants.

Mr. D. Vernekar, Advocate for the Respondent No.1.

Mr. Ravi Gawas, Advocate for the Respondent nos.3, 4, 5 and 6.

**Coram:- C. V. BHADANG, J.**

**Date:- 12<sup>th</sup> March, 2019**

**ORAL ORDER**

Both these revision applications arise out of the order dated 05.01.2019 passed by the learned Trial Court in Regular Civil Suit No.23/2018/B. As such they are being disposed off by this common order.

2. The brief facts necessary for the disposal of the applications, may be stated thus :

The first respondent in both these applications is the original plaintiff. The applicant Raymond Desa (CRA No.5/2019) is the original defendant no.1 while the applicants in Civil Revision Application No.15/2019 are the original defendant nos.3, 8 and 10 respectively. The rest of the respondents other than the respondent no.1 are co-defendants. The first respondent has filed a suit, against t6he applicants and others, inter alia, seeking a declaration that the continuation of the Executive Committee of the original defendant nos.1 to 7 for the year 2018-19 is illegal and is non est in law and any decision taken by them after 30.06.2018, as members of the Executive Committee is illegal, null and void. The first respondent is also seeking an order restraining the defendant nos.1 to 7 from acting as office bearers/members of the Executive Committee of the Goa Barge Owners Association (The Association, for short).

3. The applicants filed separate applications under Section 8 of the Arbitration and Conciliation Act, 1996, (Act for short) for referring the dispute to arbitration in terms of clause 62(b) of the Memorandum of Association (MOA).

4. The applications were opposed on behalf of the first respondent.

5. The learned Trial Court by the impugned order has dismissed the application, mainly on the ground that the arbitration agreement does not contemplate the referral of a dispute between the members and the Nomination Committee to the arbitration. The Trial Court has found that the essential case made out in the suit is as regards the omission by the Nomination Committee (which is responsible for holding elections to the Executive Committee) in following the Constitution of the Association wherein there are allegations of violation of clause 30 of Chapter IV of the Constitution which is not covered by the Arbitration Agreement.

6. I have heard the learned Counsel for the parties.  
Perused record.

7. Clauses 62(a) and (b) of Chapter V of the MOA which are relevant for the purpose, read thus :

“Clause 62(a) No member or member's representative of this Association shall be entitled to go to the court of law, or to commence any proceedings and or to go to the press or media in connection with the activities

of the association without exhausting the remedies provided in this constitution.

All proceedings that may be initiated are only subject to territorial jurisdiction of courts located at the place where the secretariat of the association is located.

Clause 62(b) In all disputes between the members of the association or members of the ex.Committee, the dispute shall be referred to the arbitration by an arbitrator or tribunal who shall be a past president or past ex. Committee member of the association to be appointed by the General Body and the decision of such arbitration or tribunal shall be final and binding on all parties in the dispute.”

8. It is submitted by the learned Counsel for the petitioners that the Arbitration Agreement as contained in clause 62(b) clearly covers the dispute which is subject matter of the suit and, therefore, the dispute has to be referred to arbitration. It is pointed out that after 2015 amendment to the Act, the role of the Court is limited and the Civil Court is only required to look as to whether, prima facie, there is a valid arbitration agreement, between the parties and if there is such an agreement, the Court is left with no alternative than to refer the dispute to the arbitration. It is submitted that the underlying dispute is between the members of the Association

as the Nomination Committee cannot be said to be a committee dehors the members of the Association. It is submitted that in any event, the main dispute is between the plaintiff and the defendant nos.1 to 7 who are the members of the Executive Committee and, therefore, clause 62(b) was clearly attracted. The learned Counsel for the petitioners pointed out that the Trial Court has not considered the amendment to Section 8 brought about in the year 2015.

9. On the contrary, the learned Counsel for the first respondent has supported the impugned order. It is submitted that the Nomination Committee is an independent committee entrusted with the work of holding elections to the Executive Committee and the arbitration clause does not contemplate any dispute between the members and the Nomination Committee, as has rightly been held by the learned Trial Court. The learned Counsel for the first respondent in addition to the ground on which the Trial Court has dismissed the application has urged one more ground. It is submitted that the arbitration agreement as contained in clause 62(b) of the MOA, cannot be said to be a valid arbitration agreement in terms of the 2015 amendment read with Schedule V of the Act. The learned Counsel has pointed out that clause 62(b) which authorises the General Body to appoint a past president

or a past Executive Committee member as the arbitrator, flies in the face of the disqualification of the arbitrator/tribunal under Vth Schedule. It is submitted that in a given case where the members who are minority have a dispute against the majority, the arbitrator appointed by the General body that too of a ex-President or an ex-member of the Executive Committee would be disqualified. It is submitted that this aspect was not pointed out to the Trial Court and obviously it is not considered. It is submitted that the referral of the dispute to arbitration under Section 8 of the Act, essentially requires a finding albeit a prima facie finding, that there is a valid arbitration agreement between the parties, which is lacking in this case.

10. I have carefully considered the circumstances and the submissions made. I find that the Trial Court has not considered the applications in the light of the 2015 amendment and, therefore, it would be appropriate that the Trial Court reconsiders the applications, on their own merits and in accordance with law.

11. In view of the fact that the applications are being remitted back to the Trial Court, it is not necessary to dwell on the rival contentions by the parties. It is for the Trial Court

to consider the same and then to decide the applications on their own merits and in accordance with law. In short, the Trial Court would consider whether, prima facie, there is a valid arbitration agreement between the parties covering the dispute which is subject matter of the suit. If yes, the parties will have to be referred to arbitration.

12. In the result, the following order is passed :

**ORDER**

- (i) The Civil Revision Applications are partly allowed.
- (ii) The impugned order dated 05.01.2019 is hereby set aside.
- (iii) The applications filed under Section 8 of the Arbitration and Conciliation Act, 1996 are remitted to the Trial Court for deciding them afresh on their own merits and in accordance with law in the light of the observations made above.
- (iv) Rival contentions of the parties are left open.
- (v) In the circumstances, there shall be no order as to costs.

**C. V. BHADANG, J.**

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