

IN THE HIGH COURT OF BOMBAY AT GOA

***APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO.13/2019***

SAJJAN ANAND NAIK KURADE Applicant

V/s.

SHUBHLAXMI Y. NAIK KURADE
@ SNEHA BHAGUBAI PATEL
AND ANR.

.... Respondents

Mr. B. Sardesai and Mr. N. Marathe, Advocates for the Applicant.

Mr. R. Kantak, Advocate for Respondent No.1.

Mr. C. Ferreira & Mr. A. Mandrekar, Advocates for Respondent No.2.

Coram:- M.S. SONAK, J.

Date:- 6th December, 2019

ORAL ORDER:

Heard Mr. N. Marathe for the applicant, Mr. R. Kantak for respondent no.1 and Mr. C. Ferreira and Mr. A. Mandrekar for respondent No.2.

2. On 15.11.2019, the following order was made:-

“ Heard Mr. B. Sardesai, learned counsel for the Applicant. Mr. Kantak, learned counsel appears for Respondent No.1 and Mr. C. A. Ferreira alongwith Mr. Mandrekar appear for Respondent No.2.

2. In the deed of partnership dated 11th June, 2010, there is a

clause which contains arbitration agreement between the parties. This clause 22 reads as follows :

“22. In the event of any dispute or disputes concerning the partnership or this Deed and/or interpretation and/or enforcement of any of the terms and condition contained herein, the same shall be referred to arbitration and the provisions of Indian Arbitration Act shall apply to such proceedings, each party having a right to nominate his/her own arbitrator and in the case of disagreement between the arbitrators so appointed and empire to be appointed by the parties or by their arbitrators whose decision shall be final”.

3. The learned counsel for the Respondents submit that since the dispute has arisen, they have no objection in principle to the parties being referred to the arbitration. However, they submit that there are certain issues relating to validity and enforceability of the terms and conditions of the agreement, which may be kept open to be decided in terms of Section 16 of the Arbitration and Conciliation Act, 1996 (the said Act).

4. Mr. Sardesai, learned counsel for the Applicant submits that the Applicant will have no objection to the adoption of the aforesaid course of action.

5. Accordingly, case is made out for appointment of arbitrator, no doubt, by leaving open the issue of validity and enforceability of the terms and conditions of the agreement which can always be decided by the Arbitrator in terms of Section 16 of the said Act.

6. The learned counsel for the parties, propose the name of Mr. Motilal Keni, a retired City Civil Judge, Bombay who is presently based at Margao Goa to be appointed as an Arbitrator in this matter.

7. Accordingly, this matter is now adjourned to 29th November, 2019, in order to enable Mr. Motilal Keni to submit the statement of disclosure in terms of Section 12(2) of the said Act.

8. Mr. Sardesai, learned counsel for the Applicant states that he will forward the authenticated copy of this order to Mr. Motilal Keni so as to enable him to file necessary statement of disclosure.

9. Stand over to 29th November, 2019.”

3. Today, Mr. N. Marathe, learned counsel for the applicant places on record statement of disclosure made by Shri Motilal Keni. The same is taken on record.

4. In view of the aforesaid, Shri Motilal Keni, retired City Civil Judge, Bombay, who is presently based at Margao, Goa, is appointed as an arbitrator to arbitrate into the disputes which have arisen between the parties. As noted earlier, issue relating to the validity and enforceability of the terms and conditions of the agreement dated 11.06.2010 are kept open for adjudication by the learned arbitrator.

5. At the request of the learned counsel for the parties it is made clear that the fees of the learned arbitrator will be borne in equal proportions by each of the parties.

6. Application for appointment of arbitrator is disposed of in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK, J.