

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF
ARBITRATOR NO. 14 OF 2019

Shivam Villa Pvt. Ltd. Applicant.

Versus

Gajanan Padiyar and another. Respondents.

Mr. Yogesh Nakarni, with Ms. T. Gupta, Advocate for the Applicant.

Mr. Rui Gomes Pereira, Advocate for the Respondent.

Coram : M.S. SONAK, J.

Date : 20th September, 2019.

P.C.:

Heard Mr. Yogesh Nadkarni, learned Counsel for the Applicant and Mr. Rui Gomes Pereira, learned Counsel for the Respondent.

2. On 6th September, 2019, this Court made the following order :

"Heard Mr. Y. V. Nadkarni, learned Counsel for the Applicant and Mr. Rui Gomes Pereira, learned Counsel for the Respondents.

2. The reply filed on behalf of the Respondents is taken on record.

3. Mr. Nadkarni, learned Counsel for the Applicant submits that the Applicant and the Respondents have

entered into an agreement for sale of iron ore/manganese ore on 15.11.2010.(the said Agreement). He submits that disputes have arisen between the parties in relation to the performance of the terms and conditions of the said Agreement. He submits that clause 21 of the said Agreement contemplates that such disputes are resolved by resorting to arbitration. He submits that notice for appointment of Arbitrator was addressed by the Applicants to the Respondents on 21.05.2019. However, the Respondents, by their response dated 18.06.2019 have resisted the appointment of Arbitrator, alleging, inter alia, that there is no arbitratable dispute between the parties. Mr. Nadkarni, therefore, submits that this is a fit case to make appointment of an Arbitrator in terms of section 11 of the Arbitration And Conciliation Act, 1996. (the said Act).

4. Mr. Rui Gomes Pereira, learned Counsel for the Respondents submits that this is a case where no arbitrable dispute exists as between the parties. He submits that the Applicant as required the Respondents to secure an environmental clearance from the Central Government, have taken all necessary steps for securing such environmental clearance. He submits that the actual receipt of such clearance is not something which is within the control of the Respondents. Mr. Rui Gomes Pereira submits that the Applicant has demanded a refund of certain amounts paid under the said Agreement. He submits that the terms of the Agreement are quite clear, in that, there is no question of any refund and the amounts made in the Agreement to stand forfeited in favour of the Respondents or in any case will continue as deposit.

5. Mr. Rui Gomes Pereira submits that in view of the aforesaid, there is no arbitrable dispute between the parties. He submits that even if the matter is referred to Arbitrator,

there will be no solution to the issues which the Applicant propose to raise. For all these reasons, he submits that this application for appointment of Arbitrator may be dismissed.

6. The rival contentions now fall for our consideration.

7. There is no dispute between the parties that they are signatories to the said Agreement. The said Agreement has arbitration clause, which reads thus:

"21. If at anytime any dispute or question arises between the Parties touching the meaning, construction or effect of this Agreement or of any clause or thing herein contained or regarding the respective liabilities and rights under this Agreement then such dispute or question shall be referred to arbitration, as per the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. All notices under this Agreement will be sent by either Party at the addresses mentioned in this Agreement. The venue of arbitration shall be in Goa."

8. The contention that there is no arbitrable dispute between the parties cannot be accepted in the facts and circumstances of the present case. The Applicants have made a claim in relation to the said Agreement. The said claim is being resisted by the Respondents. The issue as to whether the claim of the Applicants is justified or whether the resistance of the Respondents has merit is really not an issue which is required to be decided in these proceedings. Upon the perusal of the correspondence which is placed on record including, inter alia, the notice by which disputes were raised by the Applicant and appointment of Arbitrator was sought for and the response of the Respondents to the same, it is quite clear that disputes have arisen between the parties and such disputes in terms of Section 21 of the said

Agreement are required to be referred to Arbitrator. Accordingly, the objections raised by and on behalf of the Respondents cannot in the facts and circumstances of the case, be upheld.

9. Accordingly, with consent of learned Counsel for the parties, Justice R. M. S. Khandeparkar, former Judge of this Court is proposed to be appointed as the Arbitrator.

10. Learned Counsel for the parties state that they will furnish a copy of this Order to Justice R. M. S. Khandeparkar so as to enable him to file a Statement of Disclosure in terms of section 11(8) of the said Act. Upon filing of such Statement of Disclosure, final orders can be made in this application for appointment of Justice R. M. S. Khandeparkar as the Arbitrator.

11. Stand over to 13.09.2019. All concerned to act on the basis of the authenticated copy of this Order."

3. In pursuant of the aforesaid, Hon'ble Mr. Justice R.M.S. Khandeparkar, Former Judge of this Court, has filed the statement of disclosure dated 18th September, 2019.

4. Taking into consideration the aforesaid, Hon'ble Mr. Justice R.M.S. Khandeparkar is appointed as an Arbitrator to arbitrate in the disputes between the parties.

5. The Application for Appointment of Arbitrator is disposed of in the aforesaid terms.

6. All concerned to act on the basis of an authenticated copy of this order.

M.S. SONAK, J.