

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION (ST.) NO. 19487 OF 2019

Suleman Babu Sheikh	...	Petitioner
V/s.		
Abdul Gulam Peer Sheikh	...	Respondent

Mr. Vinod P. Sangivkar for the petitioner.
None for the respondent – though served.

CORAM : G. S. KULKARNI, J.

DATE : 25th SEPTEMBER, 2019.

P.C.:-

1] The petitioner in this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 has prayed for appointment of an arbitral tribunal to adjudicate disputes between the parties

2] Heard learned counsel for the petitioner. Respondents are served. On the earlier occasion, the respondent was represented by Mr. U. Z. Kazi i/by Mr. Yogendra Kanchan.

3] On 11 September 2019, the hearing of this petition was adjourned at the instance of the respondent to enable the advocate for the petitioner to produce before the Court original deed of partnership which has been produced today. On a perusal of the original deed of partnership it is clear that it is signed by the petitioner, as also by the respondent. The material contents of the partnership deed are identical to the one annexed

to the petition at Exhibit A (page-31).

4] Learned counsel for the petitioner has drawn my attention to clause 21 of the partnership deed being the arbitration agreement between the parties, which read thus :

“ All the disputes between the partners and the representatives of the deceased partner in relation to any matter whatsoever touching the partnership affairs of the construction of the interpretation of this agreement and whether before or after the determination of the partnership shall be referred to a single arbitrator to be appointed by all the partners, failing which to two or more arbitrators one to be appointed by each party of the dispute and the conciliation Act, 1996.”

5] My attention is also drawn to the notice dated 9 February 2019 of the petitioner to the respondent by which the petitioner invoked the arbitration agreement and sought appointment of an arbitral tribunal, also by stating the name of his nominee arbitrator as record in para no.7 of the said notice. As there was no response from the respondent to the said notice, the present petition has been filed.

6] The case of the petitioner is that disputes and differences have arisen between the petitioner and the respondent under the deed of partnership is in question. Learned counsel for the petitioner has stated that in pursuance of clause 1 and 2 of the partnership deed an amount of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) and Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) was paid by the

petitioner to the respondent as by way of the petitioner's contribution and the partnership firm. The business of the partnership was to undertake construction and development and the residential property as set out in para/clause no.3 of the partnership deed. Petitioner contends that the total amount of Rs.30,00,000/- was the petitioner's share in the project which was completed in November and despite the completion of the project, the respondent has refused to settle the accounts and pay the amounts which would be entitled to the petitioner, under the partnership in question. Thus disputes and differences having arisen between the parties, the petitioner invoked the arbitration agreement. Respondent despite notice has chosen not to appear. The averment as made in the petitioner would be required to be taken as uncontroverted, in the absence of any reply affidavit denying the averment and more particularly the arbitration agreement. Having noted the existence of an arbitration agreement and invocation of the arbitration agreement as per law, an arbitral tribunal would be required to be appointed.

7] Hence, the following order –

ORDER

1. Mr. Umesh Mankapure, Advocate of this Court is appointed as nominee arbitrator on behalf of the petitioner.
2. Mr. Anirudha Garage, Advocate of this Court is appointed as nominee arbitrator on behalf of the respondent.

3. The learned prospective sole arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar Judicial-I of this Court to be placed on record of this application with a copy to be forwarded to both the parties;
4. Both the nominated arbitrators shall appoint a Presiding Arbitrator to form an arbitral tribunal to adjudicate disputes and differences between the parties as arising under the partnership deed dated 31st May 2011.
5. At the first instance parties shall appear before the nominee arbitrators within 15 days from today.
6. All contentions of the parties are expressly kept open.
7. The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;
8. Petition is disposed of in the above terms. No costs.
9. Parties to act the authenticated copy of this order.
10. Office to forward a copy of this order to the learned Arbitrator on the following address.

Address: 1) Mr. Umesh R. Mankapure,
Add.- 47/49 Ground floor Yusuf Building
V N Road Flora fountain Adjoining
Akbarallys Mumbai 400 001
02224070544
adv.m@outlook.com

- 2) Mr. Aniruddha Arun Gcharge
A 17 and 18 Mayur Sadan
Nene Wadi Waldhuni
Kalyan 421 301
9820244123
aniruddhagarge@yahoo.co.in

(G.S.Kulkarni, J.)