

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Arbitration Petition NO. 124 OF 2018

Vijay Anantrao Kharade & Anr ...Petitioners
Versus
Rajendra Dattatraya Shinde And Ors ...Respondents

Mr.Dilip Bodake with Mr.Nakul K.Vane, for the Petitioners.

Mr.Sujay Joshi with Mr.Ajinkya Udane, for the Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 26 June 2019

P.C.

1. I have heard the learned Counsel for the parties.
2. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') whereby the petitioners have prayed for appointment of an arbitrator for adjudication of the disputes stated to have arisen between the parties under the agreement dated 10 August 2009 of a Limited Liability Partnership (for short 'LLP'). Mr. Bodke, learned Counsel for the petitioners has drawn my attention to Clause 16 of the said agreement which constitutes an arbitration agreement between the parties, which reads thus:-

16. Resolution of Disputes:

All disputes between the Partners or between the Partner and the LLP arising out of the LLP Agreement which cannot be resolved in terms of this Agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996).

3. By the petitioners' advocate's notice dated 12 March 2018, the petitioner had invoked the arbitration agreement and called upon the respondents to appoint an arbitrator to adjudicate the disputes between the parties under the LLP agreement in question. By the respondents' Advocate's letter dated 31 March 2018 as addressed to the Advocate for the petitioners, denying the assertions as made on behalf of the petitioners in the notice, the petitioner's request for reference of disputes by appointing an arbitral tribunal was refuted. On this background the petitioners are before the Court.

4. The respondents have appeared as also an affidavit in reply of Mr. Rajendra Dattatraya Shinde has been filed, contesting the claims of the petitioners. The respondents in the reply affidavit inter alia contend that there are no arbitrable disputes between the parties. It is the respondents' contention and as pointed out by Mr. Udane, learned Counsel for the respondents that a letter dated 1 April 2016 as addressed by one of the partners of the petitioners, would clearly indicate that there are no

disputes between the parties, as it clearly refers to three documents namely LLP reconstitution deed, a requisition letter and also a full and final settlement letter. It is submitted that in view of these documents, there does not exist any arbitrable disputes between the parties. Mr.Bodake, learned Counsel for the petitioners however submits that these documents are disputed and the assertions as made on behalf of the respondents relying on this letter that there is no arbitrable disputes, is being denied and contested by the petitioners.

5. Mr.Udane, learned Counsel for the respondents has also drawn my attention to the subsequent developments namely that the petitioners have instituted a civil suit against the Indian Overseas Bank as also against respondent nos.1 and 2 being Civil Suit no.55 of 2018 filed before the Court of Civil Judge, Senior Division, Pune. He contends that once the petitioners have taken a recourse to a civil suit, surely this petition under Section 11 ought to be held as not maintainable. To this contention of Mr.Udane learned Counsel for the respondents, Mr.Bodke, learned Counsel for the petitioners has drawn my attention to paragraph 3 of the rejoinder affidavit which states that the suit is primarily filed against Indian Overseas Bank, for not following the Reserve Bank of India's rules

and regulations for transfer of money. It is submitted that there is no relief sought against respondent no.1 in the said suit and thus there is no embargo for this Court to appoint an arbitrator, as the petitioners in no manner have waived their right to take recourse to arbitration proceedings. These are the contentions as made in paragraph 3 of the rejoinder affidavit.

6. Having heard the learned Counsel for the parties and having perused the record, it is quite clear that there is an arbitration agreement between the parties as contained in the LLP agreement as noted above. There also appears to be a proper invocation of the arbitration clause by the notice of the petitioners' advocate dated 12 March 2018 and the request as made on behalf of the petitioners was refuted by the respondents by their Advocate's letter dated 31 March 2018. A perusal of the record indicates that the disputes between the parties have arisen under the LLP agreement in question.

7. The contention as urged by Mr.Udane, learned Counsel for the respondents that there are no arbitrable disputes, in view of the letter of the petitioners dated 1 April 2016, cannot be accepted inasmuch as there

is serious contest on this position as taken by the respondents, on behalf of the petitioners. Assuming that this position as asserted on behalf of the respondents is correct it is a defence of the respondents on merits, on the basis of these three documents which are referred in letter dated 1 April 2016 of the petitioners, which would be required to be tested on its acceptability and on evidence, before the arbitral tribunal in defending the claims as made by the petitioners.

8. As regards the assertion as made on behalf of the respondent that there is a suit filed by the petitioners against the respondents, it needs to be noted that the averments in the rejoinder affidavit in paragraph 3 are clear that the suit is filed against the respondent – Indian Overseas Bank and although the respondents are made parties to the suit, Mr.Bodake has stated that there are no reliefs prayed against these respondents much less any reliefs in regard to any dispute which may arise under the LLP agreement in question.

9. In the above circumstances, in my opinion, the petition is required to be allowed. Hence, the following order:-

ORDER

(i) Mr.Pramod Dattatraya Ambekar, Retired District Judge, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 10 August 2009;

(ii) The learned prospective Sole arbitrator, fifteen days 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 petition with a copy to be forwarded to both the parties;

(iii) Learned Arbitrator shall endeavour to adjudicate the disputes as expeditiously as possible and shall publish an award within the time limit as mandated under Section 29A of the Arbitration and Conciliation Act,1996.

(iv) The fess payable to the Arbitral Tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules,2018.

(v) At the first instance, the parties shall appear before the learned sole arbitrator within 15 days from today, on a date which may be mutually fixed by the sole arbitrator;

(vi) All contentions of the parties on merits of the matter are expressly kept open;

(vii) The petition is disposed of in the above terms. No costs.

(viii) Office to forward a copy of this order to the learned Arbitrator on the following address:-

“Shri.Pramod Dattatraya Ambekar,
Retired District Judge,
Magapolis SPARKLET Flat No.A/7-1403,
Phase 3, Rajiv Gandhi Infotech Park,
Hinjawadi, Pune 411057

Mobile: 9029082532, 9082520036

(G.S.Kulkarni, J.)