

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO.162 OF 2019

Sustainable Agro-commercial Finance Limited ..Applicant
Vs.
Shivaji Dnyanoba Late & Ors. ..Respondents

Mr.Yashpal Thakur for the Applicant.

CORAM : G.S. KULKARNI, J.

DATE : 15th October, 2019

P.C.:

1. Heard learned Counsel for the applicant.

2. Three affidavits of service of Mr.Amol Annasaheb Rodge are placed on record on behalf of the applicant. In paragraph 2 of the affidavit of service dated 15 October 2019 the deponent has stated that on 13 October 2019 he has personally visited residence of the respondents to effect service of these proceedings and the respondent refused to accept the service which included covering letter dated 10 October 2019.

3. In paragraph 2 of the affidavit of service dated 29 July 2019 the deponent has stated that on 22 July 2019 he has personally visited

residence of the respondents to effect service of these proceedings and the respondent refused to accept the service which included covering letter dated 16 July 2019.

4. In paragraph 2 of the affidavit of service dated 27 August 2019 the deponent has stated that on 23 August 2019 he has personally visited residence of the respondents to effect service of these proceedings and the respondent refused to accept the service which included covering letter dated 16 August 2019.

The respondent having refused service, has failed to appear in this case. Accordingly, the application is taken up for hearing.

5. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicant has prayed for appointment of an arbitral tribunal for adjudication of the disputes which are stated to have arisen between the parties under the loan cum hypothecation agreement dated 6 February 2015. Clause 28 of the said agreement is the arbitration agreement between the parties which reads thus:-

“28. **Dispute Resolution:** In the event of any dispute or controversy that may arise from or relating to the remittance, operations or from the interpretation or implementation of this Agreement, the parties hereto undertake to first endeavour to resolve such dispute or controversy amicably through conciliation, within thirty (30) days from the date when such dispute or controversy arises.

Unresolved disputes arising out of or relating to this agreement or the arrangement agreed to herein shall be referred to arbitration of a Sole Arbitrator jointly appointed by both the parties. The place of arbitration proceedings shall be at Mumbai and proceedings to be conducted in English. The proceedings shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996 as amended from time to time. The Award of the Arbitrator shall be final and binding on both the parties. Parties to bear the respective cost and cost of the arbitration proceedings shall be shared.”

6. The case of the applicant is that a term loan facility in the sum of Rs.27,87,000/- was disbursed to the respondent as set out in more detail in the body of the application. The respondent consistently defaulted in making payment of the installments of the said financial facility as made available by the applicant. The applicant accordingly issued a notice dated 18 March 2019 invoking the arbitration agreement and called upon the respondent to appoint a sole arbitrator to adjudicate the disputes between the parties. The respondent no.4 received the said notice on 25 March 2019 and the envelope containing invocation notice dated 18 March 2019 addressed to the Respondent No.1 to 3 were returned with the remark “Not Found” dated 03 April 2019. However, despite the service, the respondent no.4 did not confirm and/or concur in the appointment of the Sole Arbitrator. Accordingly, the present application has been filed by the applicant praying for appointment of an arbitral tribunal.

7. Having heard learned Counsel for the applicant and having perused the record, it is quite clear that the respondent was beneficiary of the loan facility made available by the applicant. Under clause 28 of the said agreement, the parties have agreed for disputes being referred to an arbitral tribunal under the said agreement. It is also on record that the applicant by the notice dated 18 March 2019 invoked the arbitration agreement and sought reference of the disputes. All the averments which are made in the petition are required to be treated as admitted as they are not controverted by the respondents.

8. In the above circumstances, the application is required to be allowed. Hence, the following order:-

ORDER

(i) Mr. Milind M. Sathaye, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the loan cum hypothecation agreement dated 6 February 2015;

(ii) The learned sole prospective 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 Prothonotary & Senior Master of this Court, to be placed on record of this application

with a copy to be forwarded to both the parties;

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

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

(v) The application is disposed of in the above terms. No costs.

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

“Office No.14, 1st floor, Mezzanine, 32,
Raja-bahadur Mansion,
Ambalal Doshi Marg (Hanuman Street),
Fort, Mumbai – 400 001
Phone : 9821170905
Email : mmsathaye@gmail.com”

[G.S. KULKARNI, J.]