

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

Mr.Kiran Mulji Shah & Anr. ..Applicants
Vs.
Mrs.Hetika Hitesh Sanghavi & Anr. ..Respondents

2. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicants have prayed for appointing a sole arbitrator to adjudicate the disputes and differences between the parties arising under a Deed of Partnership dated 5 April 2011 of the firm M/s.Green Bioplast International. This application was listed before this Court (K.R. Shriram, J.) on 28 November 2017 when the following order was passed:-

“1 Mr.Rumao appearing for the applicants states that when service was attempted upon the two respondents, respondents refused service. Mr.Rumao seeks time to make one more attempt of service and to file affidavit of service.

2 As last chance, stand over to 19.12.2017.”

3. Thereafter it was listed on 13 April 2018 before this Court (S.J.

Kathawalla, J.) when the following order is passed:-

“1. The learned Advocate for the Applicant states that Respondent No.2 has accepted Service, however, Respondent No.1 is refusing to accept service. In view thereof, a copy of this order shall be served on Respondent No.1 along with the papers and proceedings, by hand delivery. The Senior Inspector of the local police station shall render all assistance to the Advocate for the Applicant/Applicant in serving a copy of this order along with the proceedings on the Respondent No.1 and to obtain his acknowledgment. Stand over to 19th April, 2018.”

4. Again on 19 April 2018 in regard to the service on the respondents following order is passed:-

“1. Stand over to 27th April, 2018.

2. The Advocate for the Applicants shall serve a copy of this order alongwith the earlier order dated 13th April, 2018 by hand delivery on the Respondent No.1. The Senior Inspector/Inspector In-charge of the local Police Station shall assist the Applicants and/or their Advocate in serving a copy of the order dated 13th April, 2018 as well as a copy of this order on the Respondents and to obtain their acknowledgments.”

5. Thereafter on 8 June 2018 as none appeared for the applicants, application was dismissed for default and it was restored by an order dated 11 December 2018 passed by this Court on Notice of Motion No.1175 of 2018.

6. In the Partnership Deed in question the parties have agreed for reference of disputes as contained in clause 17 of the said Deed which reads thus:-

“17. Arbitration: In the event of any dispute arising before any of the partners hereto concerning indenture of partnership and/or incidentally to the business of the firm, the same shall be referred to and decided by arbitration as per the provisions of Indian Arbitration Act, 1940 as amended from time to time.”

7. On perusal of notice dated 13 May 2016 issued by the applicants to the respondents, it is clearly seen that the applicants sought compliance of several requisitions in regard to the business of the partnership firm from the respondents as also invoked clause 17 of the partnership deed for reference of the disputes in the arbitration in regard to the several issues which are raised in the said notice. In paragraphs G and H (page 210 of the paperbook), the applicants stated as under:-

“G. My said clients invoke clause No.17 of the Partnership Agreement dated 15/03/2011 executed by and between you: Smt. Hetika Hitesh Sanghavi of the one part and my clients Shri. Kiran Mulji Shah, and his wife Smt. Neelam Kiran Shah of the other part, forming a partnership business in the name and style of “Green Bioplast International”;

H. My clients Shri Kiran Mulji Shah and his wife Smt. Neelam Kiran Shah hereby call upon you both, within 10 (ten) days from the date of receipt hereof by you, to consent to appointment of the Hon'ble Shri. Justice A.S. Aguiar, retired Judge of the High Court of Judicature at Bombay having his address at Benalin Home, 122, Kalina, Santacruz-East, Mumbai-400 029 as the sole arbitrator to conduct arbitration proceedings between you on the one hand and my

clients Shri. Kiran Mulji Shah and his wife Smt. Neelam Kiran Shah on the other hand to decide fairly all the disputes mentioned herein above. If sole arbitrator is appointed by both the parties, then, the proceedings can be conducted expeditiously with less expenditure.”

8. There was no response to this notice and the respondents did not take any steps to appoint a sole arbitrator to adjudicate the disputes between the parties as the applicants have filed present application.

9. Having heard learned Counsel for the applicants and having perused the record, it is clear that there exists an arbitration petition between the parties as also there is invocation of the arbitration agreement by the notice dated 13 May 2016. The respondents have refused to appear despite notice, as clearly seen from the orders passed by this Court and as noted above.

10. In the above circumstances, it would be appropriate for this Court to exercise jurisdiction under Section 11(6) of the ACA. The application is required to be allowed. It is accordingly allowed. Hence, the following order:-

ORDER

- (i) Mr.Swanand Ganoo, Advocate of this Court is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under a Deed of Partnership dated 5 April 2011;
- (ii) The learned 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) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: C/o. Mr. Janak Dwarkadas, 3rd Floor, Mulla House,
M.G. Road, Fort, Mumbai.

(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.

11. At this stage, learned Counsel for the applicants submits that the petitioners would file an independent application in respect of another firm Riya International. The applicants are free to do so.

[G.S. KULKARNI, J.]