

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.134 OF 2018

ORDER

By way of this application filed under Section 11 (5) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), the applicant seeks appointment of a sole Arbitrator to adjudicate his claim for a sum of Rs.7,00,000/- raised against the respondent company.

The applicant was employed by the respondent company for research, development, design and production of software. He was appointed as the Director of Operations under appointment letter dated 15.09.2017 and he joined as such on 30.10.2017. He was to be paid compensation of Rs.1,00,000/- per month. Alleging that the respondent company failed to pay monthly compensation from December, 2017, the applicant resigned from the post on 11.07.2018.

Claiming Rs.3,35,000/- towards arrears of monthly compensation and three months notice pay of Rs.3,00,000/-, along with interest @ 24% per annum, the applicant addressed legal notice dated 22.09.2018 to the respondent company proposing an Advocate as the sole Arbitrator for adjudicating his claim. Despite service of this notice, the respondent company did not choose to reply. Hence, this application.

Notice was ordered upon this application on 14.12.2018. Despite service of notice, both by the Registry of this Court as well as the learned counsel appearing for the applicant, the respondent company did not choose to enter appearance before this Court.

'Employee Non-Competition Agreement' dated 14.10.2017 was executed by and between the applicant and the respondent company. The same contains the section: 'Mutual Agreement to Arbitrate Claims'. Under the heading 'Arbitration Procedures', the parties agreed that the Arbitrator

should be either a retired Judge or an Attorney licensed to practice law in the State in which the arbitration is convened. It was on the strength of this arbitration agreement that the applicant addressed the arbitration notice dated 22.09.2018.

As existence of the arbitration agreement is clear and manifest and Section 11(6A) of the Act of 1996, which was inserted therein with effect from 23.10.2015, makes it clear that while dealing with an application under Section 11(5) and (6) of the Act of 1996, the High Court is required to confine itself to examination of the existence of an arbitration agreement and no more, the applicant is entitled to appointment of a sole Arbitrator to resolve his claim against the respondent company.

The Arbitration Application is accordingly ordered appointing Sri Mohd. Bande Ali, Retired District Judge, residing at House No.8-1-366/A/112/1, Janaki Nagar, Tolichowki, Hyderabad-500008, as the sole Arbitrator for resolution of the disputes between the applicant and the respondent company in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

SANJAY KUMAR, J

9th APRIL, 2019

PGS