

IN THE HIGH COURT OF BOMBAY AT GOA

***APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO.7/2019***

SUBRAMANI SOUNDAPPAN.

... Applicant

Versus

SARLABAI FONDO DESSAI @ SARALADEVI
FONDO DESAI AND 4 ORS.

... Respondents

Mr. C.A. Coutinho, Advocate for the Applicant.

Coram:- M.S. SONAK, J.

Date:- 10th January, 2020

ORAL ORDER:

1. Heard Mr. C. A. Coutinho for the applicant.

2. The following order came to be made on 13.12.2019:

“Heard Mr. I. Santimano, learned counsel for the Applicant.

2. On the last occasion, as recorded in the order dated 6th December, 2019, affidavit of service has already been filed indicating that all the Respondents have been duly served in this matter. The Applicant herein and the Respondents entered into an agreement for sale in respect of an immovable property situated at Canacona Goa on 12th April, 2018. Certain disputes have now arisen between the parties. It is the case of the Applicant that despite the payment of an amount of Rs.25 lakhs and offer to pay balance amount, the Respondents are not coming forward to cooperate in the execution of the final sale deed. Therefore, a legal notice dated 5th October, 2018 was

addressed to the Respondents. This notice was received by the Respondents and replied by the Respondents' Advocate on 4th December, 2018. Reply dated 4th December, 2018 very clearly sets out that the reply is on the basis of the instructions of the Respondents. The agreement for sale dated 12th April, 2018 contains an arbitration agreement in clause 14 thereof which reads as follows :-

“14. That in case of dispute between the parties in relation to terms and conditions of this agreement same shall be referred to an ARBITRATOR, of the choice of both parties, under INDIAN ARBITRATION ACT, whose decision shall be final binding on both parties or shall be resolved legally/through court.”

3. Accordingly, the Applicant vide notice dated 19th December, 2018 joined the issue with the reply dated 4th December, 2018 and at the same time invoked clause 14 of the said agreement, which as noted above, is the arbitration agreement between the parties. The Applicant suggested the names of three Arbitrators and required the Respondents to concur in the appointment of the same.

4. Mr. I. Santimano has then submitted that though notice dated 19th December, 2018 was sent not only to the Advocate for the Respondents but also to all the Respondents themselves, the Respondents refused to accept the same or claim the same. He submits that not claiming of notice or refusal of notice constitute good service. Copies of the postal documents/endorsements have been placed on record.

5. Taking into consideration the aforesaid facts and circumstances, there can be no difficulty in appointing an arbitrator and referring the parties to the arbitration.

6. Accordingly, Mr. M. S. Keni, retired City Civil Judge, Mumbai who is presently based in Margao Goa is proposed to be appointed as Arbitrator in the matter.

7. Copy of this order be furnished to Mr. M. S. Keni. Mr. Keni who is requested to file a statement of disclosure in terms of

Section 11(8) of the Arbitration and Conciliation Act, 1996.

8. Mr. Santimano states that the copy of this order will be furnished by him to Mr. M. S. Keni and the statement of disclosure will also be filed on or before the next date which shall be 10th January, 2020.

9. Now that the matter is adjourned to 10th January, 2020, the Applicant to take fresh steps to serve the Respondents and file yet another affidavit of service. However, it is made clear that even if there is any difficulty in service on this occasion the service already effected or deemed to have been effected will be taken as valid service.

10. Stand over to 10th January, 2020.”

3. Today, the learned counsel for the applicant states that service has been effected upon the lawyer appearing for the respondents in Section 9 application filed before the District Judge, Margao. He states that necessary affidavit of service will be filed in the course of the day. In any case, as observed in the aforesaid order dated 13.12.2019, the service effected earlier can be regarded as valid service upon the respondents.

4. Mr. M. S. Keni has filed a disclosure statement in terms of Section 11(8) of the Arbitration and Conciliation Act, 1996. The same is taken on record.

5. Accordingly, this application is disposed of by appointing Mr. M. S. Keni, retired City Civil Judge, Mumbai, who is presently based

in Margao Goa as arbitrator, to arbitrate into the disputes which have arisen between the applicant and the respondents.

6. This application is disposed of in the aforesaid terms.

7. All concerned to act on the basis of an authenticated copy of this order.

M. S. SONAK, J.