

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

927 ARBITRATION APPLICATION NO.15 OF 2018

JUGALKISHORE CHHAGANLAL TAPADIA
VERSUS
M/S SUNRISE INFOPARK AND OTHER

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Mr. R.F. Totla, Advocate holding for
Mr. R.A. Karwa, advocate for the applicant.
Ms. P.S. Talekar, Advocate for respondent Nos.6 to 8.
Mr. G.K. Thigle, Advocate for respondent Nos.3 to 5.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 06-07-2021.

ORDER :

1. Heard Mr. Totla, learned Counsel for the applicant, Mr. Thigle, learned counsel for respondent Nos.1, 3, 4 and 5 and Ms. Talekar, learned counsel for respondent Nos.6 to 8. The respondent No.2 – Anup Prakashchandra Garg stands deleted at the risk of the applicant by an order dated 3rd January 2020.

2. Mr.Totla, learned Counsel for the applicant submits, that earlier there was a partnership deed dated 01.12.1999 under which the firm M/s Sunrise Info Park was created, which had 9 partners. Since there were certain disputes between the partners, an application under Section 11 of the Arbitration and Conciliation Act 1996 came to be filed being Arbitration Application No. 5/2011, Bhimrao Basawantrao Patil and others vs. Anup Prakashchandra Garg and others in which vide order dated 13.01.2017, this Court

after considering the rival contentions and Clauses 17 and 18 therein, which required any disputes arising between the partners thereto to be referred to arbitration, allowed the application, and appointed Hon'ble Justice Shri P.V. Hardas (Retired) as the Sole Arbitrator. This order of appointment was subsequently modified by an order dated 14th July 2017, appointing Hon'ble Mr. J.N. Patel (retired Chief Justice) as the Sole Arbitrator in place of Justice Hardas. It appears that the order dated 14.07.2017, was carried to the Hon'ble Apex Court by Special Leave Petition (Civil) Diary No. 42432/2017 in which upon a request being made by the petitioner, to withdraw the Special Leave Petition, permission was granted and the Special Leave Petition was dismissed as withdrawn on 30.11.2018.

3. It is stated on record that, in pursuance to his appointment, Hon'ble Mr. Justice J.N. Patel (retd.), has commenced arbitration, in which the present applicant has also put in his appearance and has filed his defence, in which a contention has been raised that the present applicant had retired from the partnership firm, under a deed of retirement dated 01.04.2002 and, therefore, had nothing whatsoever to do with the business of the firm, or the claim made in the arbitration proceedings. An application for deletion of the present applicant also appears to have been moved before the learned Arbitrator which is stated to have been rejected by an order dated 15.09.2019 by observing that the issue of retirement claimed by the present applicant, would be decided

alongwith the main claim. It is also stated at the bar, by Ms. Talekar, learned Counsel for respondent Nos.6 to 8, that an issue regarding the retirement claimed by the present applicant has also been framed in the arbitration proceedings.

4. In the face of what has been stated above, Mr. Totla, learned Counsel for the applicant submits, that in view of the arbitration clause as contained in the retirement deed dated 01.04.2002, specifically clause no. 25, an Arbitrator needs to be appointed to decide the dispute about retirement of the present applicant from the firm, w.e.f. 01.04.2002, for which he contends that a notice was given on 14.09.2018, invoking the arbitration clause. He therefore contends, that the application needs to be allowed and an arbitrator requires to be appointed. In face of the staunch opposition put up by Ms. Talekar, contending that the issue is already within the domain of the arbitrator already appointed by this Court, in which the present applicant is a party, and the fact that the respondents No.6 to 8 herein are not signatories to the deed of retirement, and the present application under section 11, has been given up viz-a-viz the respondent No. 2 Anup Prakashchandra Garg, Mr. Totla, learned counsel for the applicant places reliance upon **Civil Appeal Nos.10800-10801 of 2018, M/s Caravel Shipping Services Pvt. Ltd. Vs M/s Premier Sea Foods Exim Pvt. Ltd.** decided on 29.10.2018 by the Hon'ble Apex Court, to contend, that an arbitration agreement, is only required to be in writing and it need not be signed, placing reliance upon Section 7 (3) of the Arbitration

and Conciliation Act and submits that even if the document is not signed by the parties, the same has to be construed to be an agreement for the purpose of Sections 7 and 11 of the Arbitration and Conciliation Act, requiring the appointment of an Arbitrator.

5. I am unable to concur with the submissions of Mr. Totla, learned counsel for the applicant. It is noteworthy to point out that the disputes about the partnership deed dated 01.12.1999 are already before the Arbitrator, in which the present applicant is a party and has already put in his defence, raising the plea about his retirement from the firm on 01.04.2002. Not only this, an issue has already been framed in the arbitration proceedings in this regard.

6. It is further material to note that the retirement deed dated 01.04.2002, does not satisfy the requirement of Section 7 of the Arbitration and Conciliation Act, for the reason that though sub-section (3) of section 7 of the Arbitration and Conciliation Act requires that an arbitration agreement shall be in writing, sub-section (4) further requires that such an agreement can be construed as an agreement in writing, if it is contained in a document signed by the parties or can be discerned from the exchange of letters, telex, telegrams or other means of telecommunication as provided therein. In the present case, Mr. Totla is unable to point out the consent of the respondent Nos. 6 to 8 to the deed of retirement, so as to satisfy the requirements of Section 7 (3) and (4) of the Arbitration and Conciliation Act. Moreover, as already noted above, the applicant is a party to the arbitration proceedings and all the issues which have

been sought to be raised independently by the present application, have already been put up before the Arbitrator. That being the position, the requirement of section 7 of the Arbitration and Conciliation Act, clearly does not stand satisfied, as a result of which, **M/s Caravel Shipping Services Pvt. Ltd.** does not come to his assistance.

7. The application is, therefore, misconceived and is accordingly rejected.

(AVINASH G. GHAROTE)

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