

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
APPLN. FOR APPOINTMENT OF ARBITRATOR
NO.8/2021

RISHI KAWATRA

...APPLICANT

Versus

RISHI SEKHRI

...RESPONDENT

Mr. Raunaq Rao, Advocate *for the Applicant.*

Mr. Gideon Noronha, Advocate *for the Respondent.*

CORAM: M. S. SONAK, J.

DATED: 7th October 2021

ORAL ORDER :

1. Heard Mr. Raunaq Rao for the applicant and Mr. Gideon Noronha for the respondent.

2. This is an application for appointment of an arbitrator in terms of the provisions of the Arbitration and Conciliation Act, 1996 (said Act).

3. The parties had entered into an agreement dated 3rd December, 2017 and clause 5 of this agreement provides for

resolution of disputes through arbitration. This clause 5, reads as follows :

“5. That it is hereby agreed that all disputes which may arise between the parties to this agreement and about performance of these presents or concerning any act or commission of other party or the dispute or by any of them or in relation to any matter whatsoever concerning this Agreement, shall be referred to arbitration in accordance with the provision of the Indian Arbitration Act. 1996.”

4. The material on record, indicates that disputes have arisen between the parties in context of the aforesaid agreement. The applicant caused a notice dated 22/3/2021 to be served upon the respondent. Despite the receipt of the notice, the respondent did not concur in appointment of any arbitrator. Hence, the present application.

5. Mr. Noronha, the learned Counsel for the respondent submits that the claim of the applicant is for money. He submits that the applicant has already instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 as is pleaded in paragraph 4 of the application. He submits that these proceedings are pending and ultimately, these proceedings are for recovery of the money which the applicant now claims by adjudication before the arbitrator.

6. Mr. Noronha relies on *M/s. Sri Krishna Agencies vs. State of A.P. & anr.* - Criminal Appeal No.1792 of 2008 decided on 11/11/2008 to contend that there can be no simultaneous or parallel proceedings based on same cause of action. He submits that that there can be no bar to the simultaneous continuance of civil and criminal proceedings, if they arise from two separate causes of action.

7. According to me, the scope of criminal proceedings and the civil proceedings, is entirely different. The proceedings under Section 138 of the Negotiable Instruments Act cannot, strictly speaking, be regarded as proceedings for recovery of money simpliciter. In any case, having regard to the provisions of the said Act and the law on the subject, this cannot be a ground to resist from appointment of an arbitrator. Once, the arbitrator is appointed, no doubt, the respondent will be at liberty to raise all permissible defences, including the defence that is now raised before me. My observations on the defence, are only *prima facie* and the same need not influence the arbitrator while adjudicating upon the disputes which have arisen between the parties.

8. The ruling in *M/s. Sri Krishna Agencies* (supra), relied upon by Mr. Noronha is quite distinguishable because, that was a matter where the proceedings under the Negotiable Instruments

Act, were sought to be quashed because the complainant had already resorted to arbitration. The Hon'ble Supreme Court referred to its earlier ruling in *Trisuns Chemical Industry vs. Rajesh Agarwal and others* – (1999) 8 SCC 686 to observe that arbitration is a remedy for affording reliefs to the party affected by breach of the agreement, but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Therefore, based on the ruling in *M/s. Sri Krishna Agencies* (supra), the respondent cannot resist even the appointment of the arbitrator to adjudicate into the civil disputes that have arisen between the parties.

9. Accordingly, it is proposed to appoint Mr. Jagannath J. Mulgaonkar, Advocate of this Court as an arbitrator in the matter. Mr. Mulgaonkar is present in the Court and after he is apprised of the status of the parties, makes a statement that he has no difficulty in accepting nomination as an arbitrator. Mr. Mulgaonkar states that the statement of disclosure will be filed in the course of the day.

10. Accordingly, this application is disposed of by appointing Mr. Jagannath J. Mulgaonkar as an arbitrator to adjudicate into the disputes which have arisen between the parties. All

contentions of all parties on merits of the disputes, are expressly kept open. The fees of the learned Arbitrator will abide by the provisions of the said Act and the rules and regulations that may be applicable.

11. This application is disposed of in the aforesaid terms. There shall be no order as to costs. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
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