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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.107 OF 2021

Mr. Girish Jamnadas Chandak

...Petitioner

Versus

Mr. Maruti Dinkar Kawade

...Respondent

Mr. Aashit A. Kankariya with Sanket S. Bora i/b. SPCM Legal
for the Petitioner.

Mr. Bhushan A. Walimbe with Priyal G. Sarda for the
Respondent.

CORAM : R.I. CHAGLA J.

DATE : 20 October 2021

ORDER :

1. Heard learned Advocates parties.
2. By this Arbitration Petition, the Petitioner is seeking appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.
3. There is an arbitration agreement at clause 28 of the partnership deed dated 27th November, 2015. The Arbitration Agreement clause 28 reads as under:-

28. Arbitration : All disputes and questions, interpretations arising out of the partnership or this deed between the partners or between any one of them and the legal representative of other or others or between their legal representative during the continuance of partnership or thereafter will be under Pune Jurisdiction of respective authorities and shall be referred to the arbitration of two arbitrators one appointed by each party and in case of their disagreement to an umpire appointed by the said arbitrators or in case of default by the parties, whose decision shall be final, conclusive and binding upon the parties, their heirs, legal representatives and successors. The arbitration proceedings shall be carried on in Pune (more specific in under Pune Jurisdiction Office of respective authorities as applicable) under Indian Arbitration and Reconciliation Act, 1996 or any statutory modification thereof.

4. The learned Advocate for the Petitioner has referred to letter dated 31st January, 2020 by which the Advocates of the Petitioner had invoked arbitration under Clause 28 of the said partnership agreement. He has submitted that there are disputes between the Petitioner and Respondent which has been mentioned in the legal notice invoking arbitration and which concerns the partnership agreement as well as the Petitioner's desire to retire from partnership and payment of Petitioner's dues. He has submitted that this dispute is clearly covered under clause 28 of the said partnership deed.

5. The learned Advocate for the Respondent had disputed this position. He has submitted that the dues which Petitioner claims are recoverable from third persons who are not parties to the partnership agreement and for which Suit No.4778 of 2021 has been filed by the Respondent in the District Court, Pune. He has submitted that it is only after these dues of the partnership firm are recovered, the Petitioner has a claim against the Respondent so far as his dues are concerned.

6. Having considered the submission, it does appear from the partnership deed dated 27th November, 2015 that clause 28 provides for arbitration and is wide enough to cover the dispute between the Petitioner and Respondent. Further, the Petitioner has invoked arbitration by legal notice dated 31st January, 2020 and which mentions that certain dues are payable by the Respondent to the Petitioner. Further, it is mentioned that the Petitioner desire to retire from the partnership firm on account of the acts of the Respondent which defame the reputation and goodwill of the Petitioner by making baseless, fraudulent and frivolous accusations against the Petitioner in order to harass and extort monetary gains from the Petitioner. He has submitted that in the legal notice it

is mentioned that the parties have tried amicably settled the disputes. However, this has failed and the Petitioner is accordingly invoking arbitration under clause 28 of the partnership deed.

7. Considering that the disputes between Petitioner and Respondent are covered under the arbitration agreement at clause 28 of the partnership deed, the Arbitration Petition is required to be allowed by appointing an Arbitrator to decide the dispute between the Petitioner and Respondent. Hence the following order:-

(i) Ms. Sadhana M. Shinde, Retired, Principal and District Judge whose name is included in the panel of approved list of arbitrators of this Court is appointed as Arbitrator under clause 28 of the partnership deed dated 27th November, 2015.

(ii) It is made clear that the other disputes including Suit No.4778 of 2021 filed by the Respondent in the District Court, Pune against the inter alia the Petitioner as well as the other proceedings including Criminal M.A. No.2730 of 2021 before the JMFC, Pune shall continue and will not be affected by this order.

(iii) The Arbitration Petition is accordingly disposed of in the above terms.

[R.I. CHAGLA J.]