

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 7 OF 2019

Media Monks Thr. Partner ... Petitioner
Prashant Vishwanath Tungare and Anr.

vs.

Mahalasa Entertainment Through ... Respondents
Proprietor Suresh Govindray Pai and Anr.

Mr. Vaibhav Patankar i/b. M/s. Patankar and Associates for the Petitioner.
None for the Respondent.

CORAM : A. K. MENON, J.

DATED : 23rd MARCH, 2021.

P.C. :

1. The petitioner a partnership firm seeks appointment of a Sole Arbitrator. Disputes between the parties are essentially between petitioner and respondent no.1. Respondent no. 2 is not a party but has been impleaded apparently because they have been witness to the execution of a Co-Production Agreement between the petitioner and respondent no.1. The disputes between petitioner and respondent no. 1 are admittedly restricted to the Co-Production agreement copy of which appears at Exhibit A to the petition. The agreement contains an arbitration clause embodied in clause 16.

2. Learned counsel for the petitioner submits that in terms of the Arbitration clause no settlement has been arrived at amicably and hence it has become necessary to refer disputes to the Sole Arbitrator as provided in clause 16(c). He has

invited my attention to the notice of invoking arbitration annexed at Exhibit E to the petition dated 12th July, 2018 and addressed to the proprietor of respondent no.1. It calls upon the respondent no. 1 to appoint a sole arbitrator who has been nominated vide clause 3 of the said letter. In response Advocate Mr. Vikram V. Singh who is presently on record for the respondent in this petition, has vide his letter dated 6th August, 2018 has sought to dispute the petitioners contention. The respondent states that the disputes have already been resolved by Mr. Sushant P. Tungare.

3. On behalf of the petitioner it is contended that on earlier occasion vide letter dated 15th March, 2018 addressed to the petitioners Advocate respondent had in clause 6 expressed readiness to resolve the dispute by appointing arbitrator as mentioned in the agreement. In the same breath the respondent has stated that certain issues have been discussed and resolved. These are contradictory statement in this letter.

4. This petition has been affirmed in October, 2018 and is pending since 2019 Respondent no. 1 has not filed any reply. Over several occasions time was granted to the respondent. On 11th September, 2019 the respondents were given last chance to appear and the matter was adjourned to 25th September, 2019. Notice is seem to have been served and respondent appeared on 6th November, 2019 and the matter adjourned to 20th November, 2019. On 20th November, 2019 the matter was adjourned to 11th December, 2019. Eventually the matter was circulated on 18th February, 2021 and on 23rd February, 2021 the Court observed that notice appears to have been served upon respondents Advocate of the adjourned date and the

matter was adjourned. On 9th March, 2021 the respondent was represented by Mr. Dattatray Babar who appeared on behalf of Mr. Singh. Matter was mentioned and was adjourned by consent to 16th March, 2021. On 16th March once again respondent remained absent the matter came to be adjourned to date today. Once again respondent are absent.

5. No reply has been filed. I am therefore of the view that respondent no. 1 appears to be avoiding the appointment of arbitrator. Sufficient opportunity has been given to him. In view thereof I pass the following order :

(i) Shri Yashodeep P. Deshmukh, 1404, A, Kukreja Residency, W. T. Patil Marg, Chembur, Mumbai-400 071 is appointed Sole Arbitrator to adjudicate upon disputes between the parties.

(ii) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded. In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator.

(iii) The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the “Registrar (Judicial-I) of this Court at his earliest convenience before entering upon the reference to arbitration. Copies will be given to both sides.

(iv) Petition is disposed in the above terms.

(v) No costs.

(A. K. MENON, J.)

Digitally
signed by
Rajeshwari
R. Pillai
Date:
2021.03.24
17:39:00
+0530