

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 6 OF 2022

Miguel Pereira & anr.

... Applicant

Versus

Antonio Alvito Bosco & anr.

... Respondents

**Mr. C. A. Coutinho, Advocate with Mr. Ivan Santimano, Advocate
for the Applicant.**

Mr. John A. Lobo, Advocate for the Respondents.

CORAM: G. S. KULKARNI, J.
DATED: 27 September, 2022

P.C.

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), whereby the Applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties, which have arisen under the Agreement dated 2 April .2013 read with the Addendum Agreement dated 9 January 2014. The arbitration agreement between the parties is contained in Clause 15 of the principal Agreement (dated 2 April 2013). There is no dispute in regard to the existence of the Arbitration Agreement between the parties.

2. The stand taken by the respondent is that the Agreements itself have lapsed inasmuch as the Applicant had not made payments as per the terms and conditions as contained in the said Agreements. Such stand was raised by respondents in their letter dated 25 April, 2020 addressed to the applicant. Thereafter the applicant issued a notice to the respondent dated 27 May, 2021 invoking the Arbitration Agreement and calling upon the respondent to appoint a sole Arbitrator to adjudicate the disputes and differences between the parties which have arisen under the Agreement dated 2 April, 2013 read with the Addendum Agreement dated 9 January 2014.

3. The invocation letter was responded by the respondents by their Advocate's letter dated 4 June 2020, in which the respondent took a position that as the agreement itself had lapsed, there was no subsisting arbitration agreement between the parties and hence there was no question of any arbitration. Thus, on a failure on the part of the respondent to agree in appointing an arbitral tribunal, the present proceedings are filed.

4. I have heard the learned Counsel for the parties on the proceedings for sometime. Learned Counsel for the applicant has taken me through the relevant clauses of the agreements as also the correspondence on record. Learned Counsel for the respondent has referred to the reply affidavit on behalf of respondents to contend that the claim as made by the applicant

is barred by limitation and, therefore, the application ought not to be entertained. However, learned Counsel for the respondents has fairly submitted that the respondents can raise such issue on limitation, in regard to the maintainability of the claims as sought to be asserted by the applicant in the arbitral proceedings.

5. In the above circumstances, as the basic requirements for this Court to exercise jurisdiction under Section 11(6) of the Arbitration and Conciliation Act 1996, are imminently present inasmuch as there is a lawful invocation of the Arbitration Agreements, the Court needs to exercise jurisdiction to appoint an arbitral tribunal. However, keeping open all the contentions of the parties including the contention of the respondent on limitation as also maintainability of the claims as being made by the applicants. Hence, the following Order :

ORDER

(i) Justice F. M. Reis, Former Judge of this Court, is appointed as a sole Arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement dated 2 April 2013 read with the Addendum Agreement dated 9 January 2014.

(ii) The learned sole Arbitrator, before entering the arbitration reference, shall make a declaration under Section 11(8) read with Section 12(1) of the said Act to be placed on record of the present proceedings and furnish a copy thereof to the parties.

(iii) *The parties are directed to appear before the learned Arbitrator within a period of 15 days from today on a date which may be mutually convenient and as may be fixed by the learned sole Arbitrator.*

(iv) *The fees of the arbitral tribunal shall be governed by Schedule IV of the Act.*

(v) *All contentions of the parties on merits are expressly kept open including the contention of respondent on limitation.*

6. A copy of the said order shall also be forwarded to the learned Arbitrator to the following address :

*Residence : D-1, D2, Garden View Apartments, Dr.
Antonio Colaco Road, Margao-Goa.*

*Office : D-1, D2, Garden View Apartments, Dr.
Antonio Colaco Road, Margao-Goa.*

7. The application is disposed of in the above terms. No costs.

G. S. KULKARNI, J

ANDREZA
PEREIRA

 Digitally signed by ANDREZA
PEREIRA
Date: 2022.10.01 19:20:33 +05'30'