

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 09 OF 2021

Ashok Mallappa Nasipude

...Petitioner

Versus

Bajirao Shivlang Shetty

...Respondent

* * *

- Mr. Kedar Lad i/by Mr. Satyajee Shirke, for the Petitioner.
- Mr. Kalpesh Patil, for Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 16TH NOVEMBER, 2022.

P. C. :

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator. The present petition has been filed in the context of a Partnership Deed dated 13th May, 1993, executed between the parties. It appears that the firm is engaged in the business of buying and selling of coconuts at Karad.

2. Since disputes arose between the parties, the Arbitration Clause which forms a part of the Partnership Deed assumes significance. As per the Arbitration Clause, if the disputes between the parties were not amicably settled, the same would have to be referred to a Tribunal of two Arbitrators for resolution of the disputes.

3. On 25th June, 2020, the petitioner invoked the Arbitration

Clause by issuing notice through Advocate to the Respondent, but there was no response to the same. It is in this backdrop that the present petition is filed.

4. Upon the Respondent appearing in the Court, an objection was raised as regards maintainability of the present petition on the ground that the Partnership Firm was not registered. The petition was adjourned for further consideration, because there was some confusion as to whether the Partnership Firm is registered or not.

5. Today, when the petition was called out for hearing, the learned Counsel appearing for the petitioner relied upon a document issued by the Registrar of Firms to contend that the firm is indeed registered.

6. Even otherwise the learned Counsel appearing for the Respondent fairly submitted that the objection on the ground of registration or otherwise of Partnership Firm may not be relevant in the light of the law laid down by this Court in the case of Choudhari Food Industries Vs. Ahmednagar District Goad Rearing And Processing Co-operative Federation Ltd., 2022 (2) Mh.L.J. 117.

7. This Court has perused the aforesaid judgment. It is categorically held therein, after relying upon judgment of Hon'ble Supreme Court in the case of Umesh Goel Vs. Himachal Pradesh Co-

operative Group Housing Society Ltd., (2016) 11 SCC 313, that Section 69 of the Partnership Act, would not be applicable to Arbitration proceedings, thereby indicating that even if the Partnership Firm was not to be registered, the objection would not sustained.

8. In the light of the above, this Court is inclined to consider the prayer made in the present petition.

9. It is found that the Arbitration Clause provides for appointment of a Tribunal consisting of two members. But, the same is hit by section 10 of the aforesaid Act, which specifically provides that although the parties are free to determine the number of arbitrators, such number shall not be an even number.

10. In this backdrop, the learned Counsel for the parties, on instructions, submit that the parties are agreeable to appointment of a Sole Arbitrator for resolving the disputes between them.

11. The learned Counsel for the Respondent has suggested the name of Advocate A. Y. Patil, an Advocate practicing at Karad, which is the place of business of the Firm. The learned Counsel for the Petitioner has no objection to the name proposed on behalf of the Respondent.

12. In the light of the above, Advocate A. Y. Patil, Taluka Karad, District Satara is appointed as the Sole Arbitrator for resolution of the disputes between the parties.

13. The details of the learned Arbitrator is as follows :

Mr. Atmaram Yashwant Patil, Advocate

*Flat No. 383, Yashraj, Mali Colony, Shaniwar Peth,
Karad, Ta. Karad, Dist. Satara.*

14. Learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) read with Section 12(1) of the said Act, to the Registrar (Judicial) of this Court, within four weeks from today.

15. The learned Counsel for the parties are directed to immediately communicate this order to the learned Arbitrator.

16. The Fees of the learned Arbitrator shall be as per Schedule IV to the said Act.

17. All questions are kept open to be determined by the learned Arbitrator.

18. The petition stands disposed of.

(MANISH PITALE, J.)