

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL (STAMP) NO. 21402 OF 2022**

M/s. Solar International and another ... Appellants

vs.

Zainab Anand Shetty ... Respondent

**WITH
INTERIM APPLICATION NO. 18746 OF 2022**

Mr. Prantik Majumdar a/w. Mr. Brijesh Nittekar, i/by. R.V.J. Associates for the applicants/appellants.

Ms. Eventa A. Gonsalves a/w. Mr. Reyden L. Gonsalves for respondent.

CORAM : MANISH PITALE, J

DATE : 17th NOVEMBER, 2022

P.C. :

. By this appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellants have challenged the order dated 15th November, 2019, passed by the City Civil Court, Bombay, whereby Notice of Motion moved by the appellants (original defendants) under Section 8 of the aforesaid Act for referring the dispute to arbitration, was rejected.

2. According to the appellants, in view of the Clauses 43 and 44 of Agreement dated 15th October, 2009 executed between the parties, there existed an arbitration clause and that therefore, the Court below was not justified in rejecting the Notice of Motion.

3. Upon notice being issued, the respondent (original plaintiff) appeared through counsel.

4. The learned counsel for the parties informed this Court that apart from Summary Suit No.2771/2013 filed by the respondent/plaintiff herein, another Regular Suit bearing No.2770/2013 was filed by the respondent/plaintiff in context of the very same agreement and the disputes that arose between the parties. In the said matter also, Notice of Motion had been moved under Section 8 of the aforesaid Act, referring the arbitration which was dismissed by the Court below. Civil Revision Application No.33/2014 was filed before this Court and on 31st January, 2014, order was passed by this Court granting rule and ad-interim stay of the proceedings in the said suit was granted. The said Revision Application is pending before this Court.

5. In the present appeal, after arguing the matter for some time, the learned counsel for the respondent/plaintiff sought a pass over in order to take appropriate instructions in the matter.

6. In the post-lunch session, learned counsel for the respondent/plaintiff submitted that she has instructions to withdraw both the suits i.e. Summary Suit No.2771/2013 as well as Regular Suit No.2770/2013, filed against the appellants herein before the Court below. It was submitted that the said statement may be recorded and therefore, the respondent/plaintiff was agreeable to the appointment of arbitrator in terms of the aforesaid Act for resolution of the disputes arising between the parties.

7. In view of the above, the statement made on behalf of the respondent/plaintiff is recorded and Summary Suit No.2771/2013 as well as Regular Suit No.2770/2013, are disposed of as withdrawn.

8. In view of the statement made on behalf of the respondent/plaintiff that she is agreeable to referring the disputes to arbitrator, in terms of aforesaid clause of the agreement, learned counsel for the parties were heard on the question of appointment of arbitrator.

9. The parties have agreed for appointment of Advocate Mr. Ranjeev Carvalho as the arbitrator. The details of the learned Arbitrator are as follows:-

Mr. Ranjeev Carvalho
302, Oval House, British Hotel Lane,
Opposite Commerce House,
Nagindas Master Road,
Mumbai – 400 023.
Mob.: 90041 04918
E-mail: ranjeevcarvalho@gmail.com

10. Parties to immediately inform the learned arbitrator about his appointment.

11. Learned arbitrator is requested to communicate his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court. The fees of the learned Arbitrator shall be fixed in terms of Fourth Schedule to the aforesaid Act.

12. All questions are left open to be decided by the learned arbitrator.

13. Appeal stands disposed of in above terms.

14. In view of the disposal of appeal, pending applications, if any, stand disposed of.

(MANISH PITALE, J)

Priya Kambli