

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**ARBITRATION PETITION NO. 28 OF 2019**

Ibrahim M. Shaikh. ..Petitioner  
vs.  
Haroom Mohammed Khan. ..Respondent

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Mr.Prasad Pathare, for the Petitioner.

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**CORAM : G.S. KULKARNI, J.**  
**DATE : JULY 27, 2022.**

**P.C.:**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '**the Act**') whereby the petitioner has approached for appointment of arbitral tribunal for adjudication of disputes and differences between the parties which have arisen between the parties under the Partnership Deed dated 19 November 2016. The arbitration agreement is contained in Clause 20 of the Partnership agreement which reads thus:-

“20. That if any dispute or differences shall arise between the Partners hereto touching the business of the Business or interpretation of any provision hereof or otherwise, howsoever relating to the Business and its business the same shall be decided before an arbitrator as per The Arbitration and Conciliation Act, and the expenses of the same shall be made equally by both the parties.”

2. It is the case of the petitioner that the petitioner invested an amount of Rs.13,65,000/- into a business of the partnership firm. The petitioner has grievance that the respondents did not allow inspection of the partnership books. There is a partnership account. It is the case of the petitioner that the respondents had carried the daily collection amount at his home and whenever insisted for inspection, the respondents threatened and abused the petitioner. Thus, the petitioner's case is that the respondent/partner has acted

contrary to the terms and conditions of the partnership deed. The petitioner by its notice dated 20 May 2021 dissolved the partnership and raised a dispute. The petitioner also requested that the dispute be resolved amicably. It is the petitioner's case that an amount of Rs.10,00,000/- is due and payable by the respondent to the petitioner. The petitioner has placed on record various documents to show that the conduct of the respondent including some police complaints which have been made by the petitioner against the respondent.

3. It is on the above premise, the petitioner by its advocate's letter dated 22 March 2018 invoked the arbitration agreement and called upon the respondent to appoint an arbitrator. However, the respondent did not accept such request and accordingly, the present petition is required to be filed on 29 October 2018.

4. A reply affidavit has been filed on behalf of the respondent disputing the contentions as urged on behalf of the petitioner. A reply is primarily on the merits of the respondent's case and denying the liability.

5. I have heard learned Counsel for the petitioner. The respondent although represented by an Advocate and although a reply affidavit is filed, is not represented. Being a 2019 petition, the adjudication on this petition cannot be delayed considering the orders of the Supreme Court in "**M/s.Shree Vishnu Constructions Vs. The Engineer in Chief, Military Engineering Service & Ors.**" (Special Leave Petition © No.5306 of 2022, decided on 19 May 2022), in relation to Section 11 proceedings.

6. Having noted the facts in the aforesaid paragraphs, it is clear that there was a partnership agreement between the parties. The case of the petitioner is of a breach on the part of the respondent of the terms and conditions of the partnership agreement/deed. It is also quite clear that there is an Arbitration Agreement between the parties as contained in Clause 20 of the partnership

deed, as also there is lawful invocation of the arbitration agreement. As the respondent did not accept the request of the petitioner to refer the disputes and difference to arbitral tribunal, the present application has been filed. Thus, the requirements under the provisions of Section 11 are imminently present for this Court to exercise jurisdiction under Section 11 of the Act. The petition is accordingly, required to be allowed. The petition is disposed of by the following order:-

**ORDER**

- (i) Mr. Amit Sale, Advocate of this Court, is appointed as a sole Arbitrator to adjudicate the the disputes and differences between the parties under the Partnership Deed dated 19 November 2016;
- (ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial) of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;
- (iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties on merits of the matter are expressly kept open;
- (vi) The Petition is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr.Amit Sale, Advocate,  
Address: Office No.23, Rajgir Chambers,  
Opp, Old Customs House,  
Shahid Bhagat Singh Road,  
Fort, Mumbai-400001.  
Mobile No. 9320130900  
Email: [adv.amitsaleoffice@gmail.com](mailto:adv.amitsaleoffice@gmail.com)

[G.S. KULKARNI, J.]