

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO. 54 OF 2020

Manish Shah (HUF)

...Applicant

vs.

V.G. Maariyappan,

Sole proprietor of Vinayaga Communications

...Respondent

Mr.Aurup Dasgupta with Sonam Ghiya & Priyanka Pandey i/b. Jhangiani,
Narula & Associates for Applicant.

CORAM : G. S. KULKARNI, J.

DATED : 7 JUNE 2022

P.C. :

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 whereby the Applicant has prayed for appointment of an arbitral tribunal for adjudication of disputes and differences which have arisen between the parties under the Deed of Assignment dated 27 December 2016 read with addendum dated 30 March 2017. The arbitration agreement is contained in Clause No.20 of the Deed of Assignment, which reads thus :

“20. In case of any dispute or differences between the parties, the parties shall refer the matter to the Arbitration of a sole Arbitrator, if the parties agree upon the sole arbitrator or to a panel of three arbitrators, one to be appointed by each party and the third Arbitrator is appointed by the other two Arbitrators as Presiding Arbitrator. The Arbitration shall be at Mumbai and shall be governed by the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof for the time being in force.”

2. The case of the Applicant is that disputes and differences have arisen between the parties under the agreement in question, under which the Applicant has assigned the rights of dubbing and exhibiting rights of a Tamil film, namely, “Oru Meeliya Kodu”. The Applicant contends the said film was dubbed and was exhibited. The Applicant contends that the rights in respect of the said film were assigned by the Applicant to one Goldmines Telefilms Pvt. Ltd., who dubbed the said film in Hindi language titled as “Killer Kaun” as set out in the application. The Applicant contends that one Azure Entertainment Pvt.Ltd. issued a takedown notice to Goldmines Telefilms objecting to the rights of Goldmines as assigned by the Applicant. On an enquiry by the Applicant, it was discovered that the said film “Oru Meeliya Kodu” was based on a Spanish Film “EI Curpo” directed by Paulo, in respect of which Azure had exclusive and irrevocable adaptations and remake rights in all Indian languages, and accordingly Azure had assigned the rights to remake the film “EI Curpo” only once in Kannada and/or Tamil language and in no other language, Indian and/or foreign to one M/s.Akshaya Creations, who had no dubbing rights to be assigned to any person.

3. The Applicant contends that as a consequence of this, Goldmines entered into a Deed of Settlement with Azure *qua* the rights of the said film “Killer Kaun”. The Applicant thus contends that the Respondent’s assignment of rights to the Applicant was illegal, null and void. The case of the Applicant, on such conspectus, is of the damages suffered by him. In view of such dispute having arisen between the parties, the Applicant, by its notice dated 9 March 2019, invoked the arbitration agreement as contained in the agreement in question and called upon the Respondent to appoint an arbitral tribunal for adjudication of the disputes.

However, the Respondent did not reply to the revocation notice. Hence, the present application came to be filed.

4. On 8 March 2022, when the application was listed before the Court, the following order was passed recording the service of notice on the Respondent, and a fresh notice being issued:-:

“1. Learned counsel for the applicant has tendered two affidavits of service not only in regard to the service of the proceedings on the respondent, but also in regard to the intimation to the respondent of today’s listing. The said affidavits are placed on record. Respondent however is not represented. Another opportunity needs to be granted to the respondent to appear in the present proceedings.

2. Issue notice to the respondent, returnable on 29 March, 2022. In addition to the Court notice, learned Advocate for the applicant is permitted to serve the respondent by all permissible modes and place on record affidavit of service before the returnable date.

3. Let the notice be served through local Court the information on which be obtained from the office of Registrar, Madras High Court. Let the service report be placed on record on or before the adjourned date of hearing.

4. In the event of despite service of notice the respondent is not represented on the adjourned date of hearing, the Court shall hear the applicant and pass appropriate orders.

5. Stand over to 29 March, 2022 (H.O.B.).”

5. In pursuance of such order, vakalatnama on behalf of the Respondent has been filed on record. However, the Respondent is not represented nor reply affidavit has been filed. It appears that the Respondent is not interested to contest the present application.

6. From what has been noted above, it is clear that there exists an arbitration agreement between the parties. Also there is an invocation of the arbitration agreement. The arbitration agreement, as also the invocation of the arbitration agreement, is required to be taken to be not in dispute for this Court to exercise jurisdiction under Section 11(6) of the Act.

7. Hence, the following order. :

ORDER

(i) Mr. Anupam Surve, Advocate, is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Deed of Assignment dated 27 December 2016;

(ii) The learned sole arbitrator, 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 Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;

(iv) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018 and shall be borne by the parties in equal proportion;

- (v) All contentions of the parties are expressly kept open;
- (vi) The application 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. Anupam Surve, Advocate
D-1, Jeevan Jyot,
1st floor, 18/20 Cawasji Patel Street,
Fort, Mumbai – 400 001.
Mobile : 9819855561
Email: anupamsurve@gmail.com

(G.S. KULKARNI, J.)