

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

COMMERCIAL ARBITRATION APPLICATION NO. 65 OF 2020

Ulka Shah

...Applicant

vs.

K. Murugan,

Sole Proprietor of M/s.Harshini Movies

...Respondent

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

CORAM : G. S. KULKARNI, J.

DATED : 7 JUNE 2022

P.C. :

. 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 the disputes and differences which have arisen between the parties under the Deed of Assignment dated 17 May 2017 read with addendum Agreements dated 18 July 2017 and 10 May 2018. The Deed of Assignment concerns dubbing rights in respect of a Tamil film, titled as “Bhaskar the Rascal”, which were assigned by the Respondent to the Applicant. The Applicant had further assigned the rights in the said film to one Goldmines Telefilms Pvt.Ltd. as permitted under the Deed of Assignment, who had further assigned rights to Star India Pvt.Ltd. Star India Pvt.Ltd. issued a public notice through its Advocates Kadam & Co. in regard to the acquisition of such rights. In response to such public notice, a claim was received by Star India Pvt.Ltd. from one K.I. Siddique claiming to hold rights which Star India was acquiring. The said claim was forwarded by Star India to Goldmines

Telefilms Pvt.Ltd., who had in turn forwarded the claim to the Applicant. It is the Applicant's case that such claim was settled by the Applicant and for which an amount of Rs.40 lakhs was required to be paid to Siddique plus GST. Under these circumstances, the Applicant called upon the Respondent to refund the amounts as paid under the Deed of Assignment to the Respondent, which is an amount of Rs.173 lakhs along with interest, vide the Applicant's letter dated 14 January 2019. However, the Respondent neither made any payment to the Applicant of the said amounts as demanded nor replied to the said notice. Accordingly, the Applicant, by its letter dated 27 November 2019, as addressed to the Respondent invoked the arbitration agreement as contained in Clause 21 of the Deed of Assignment and called upon the Respondent to appoint an arbitral tribunal to adjudicate the disputes and differences between the parties. The arbitration agreement as contained in Clause 21 of the assignment reads thus :

“21. 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. As the Respondent did not respond to the invocation notice, the present application was filed.

3. On 8 March 2022, to enable the Respondent to represent in the present proceedings, the following order was passed :

“1. Learned counsel for the applicant has tendered two

affidavits of service dated 04 March, 2022. The applicant had taken steps to serve the present application on the respondent. It is stated in the affidavit that packet containing the letter of the applicant's Advocate dated 27 January 2020 along with service of the proceedings was received by the respondent on 30 January, 2020. As per the details as set out in paragraph 3 of the said affidavit, it appears that the respondent is served. Respondent is however not represented.

2. However, as a matter of last opportunity to enable the respondent to appear in the present proceedings, stand over to 22 March, 2022.

3. The applicant is permitted to inform the respondent of the adjourned date of hearing and place on record an affidavit of service.

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. A copy of this order be also forwarded along with notice to the respondent.”

4. There are already three affidavits of service, two affidavits dated 11 March 2022 and an affidavit dated 22 March 2022, as placed on record as also partly noted in the order passed on 8 March 2022. The Respondent despite service is not represented. It appears that the Respondent is not interested to contest the present application. In these circumstances, it will be required to be presumed that the contentions, as urged by the Applicant in the memo of application, are not disputed/or have remained uncontroverted. As noted above, there is an arbitration agreement between the parties, as also there is a lawful invocation of the arbitration agreement. The Respondent has not accepted the Applicant's request to appoint an arbitral tribunal. Thus, the requirements for this

Court to exercise jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 are eminently present.

5. In the above circumstances, the application would be required to be allowed. It is, accordingly, allowed by following order :

ORDER

(i) Ms.Savita Ganoo, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Deed of Assignment dated 17 May 2017;

(ii) The learned prospective sole arbitrator, before entering the 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) 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 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:

Advocate Savita Swanand Ganoo,
Flat No.B-402, Building No.19,
Siddhivinayak CHS Ltd.,
Tilak Nagar, Chembur,
Mumbai – 400089
Mob.No. 9820450243

(G.S. KULKARNI, J.)