

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 363 OF 2019

Hunspal Industries

... Applicant

vs.

Bank of India and 2 Ors.

... Respondents

Mr. Jeetendra Ranawat for the Applicant.

Mr. A. B. Shinde i/b. M/s. Anant B. Shinde & Co. for Respondent.

CORAM : A. K. MENON, J.

DATED : 25th APRIL, 2022

P.C. :

1. Mr. Ranawat for the petitioner states that respondent nos. 2 and 3 have been inadvertently joined as parties. Arbitration Agreement is between plaintiff and respondent no. 1. Accordingly respondent nos. 2 and 3 to be deleted. Amendment to be carried out within one week from today.

2. In this application under Section 11(6) the applicant is a contractor who is carrying out certain renovation work for respondent no. 1-bank who seeks appointment of a Sole Arbitrator in terms of Clause 28 of the tender conditions.

3. The respondent is opposing the application on the basis that the amount which is now sought to be claimed and recovered is beyond work that was forming part of the original tender. Surprisingly the work done has been agreed and the fact that the bank's technical officer has certified the work done and recommended payment is also not in dispute. The bank has not filed any affidavit in reply but has relied upon its reply to legal notice at Exhibit I. In that letter the contention of the bank is to be seen in paragraph 3 which is reproduced below :

"It is admitted fact that you have allotted the work at the Santacruz Branch for the renovations vide its work order no. MNZ/A & S/KSV/12-13/1257 to the extent of the work specified therein as per the work order. However, for the additional work as claimed by your client is appears that bank has not instructed your client in the matter. However, at this stage it is very difficult for us to take that the additional work was carried out by your client in absence of any work order issued by the appropriate authority. Therefore, we deny the work done at your client's end as claimed by your client.*

4. It is contended that the work order in relation to which this clause will apply does not cover the additional work. Nothing is placed on record to justify the quantity of work to be done. On one hand the bank admits that work has been done, its technical officer certifies that the work is carried out and that some additional work has been carried out in terms of certificate

dated 28th October, 2013. The Architect is also seen to have certified certain work done at Exhibit C. Various documents are annexed such as measurement sheets etc. with which we are not presently concerned. Question is whether the Sole Arbitrator is to be appointed. The notice invoking arbitration is dated 29th January, 2019.

5. Prima facie the banks contention appears that some work is done but it is beyond the tender terms. Clause 28 of the Agreement provides for disputes related to the tender. It appears that the work is clearly beyond the tender conditions and even certification of work will not entitle reference to arbitration. The invocation of Arbitration is more than six years after the first certification by the bank. In my view there is no occasion to appoint Arbitrator under Section 11 because the claim does not arise under the agreement between the parties and the terms of the Tender. It will be open for the Applicant, if it so desirous to adopt such other remedy it may choose in accordance with law.

6. Arbitration Application is dismissed.

7. No orders to costs.

(A. K. MENON, J.)