

Vidya Amin

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

ARBITRATION APPLICATION NO. 187 OF 2021

Salvadore D'souza (since deceased, through
LR Mrs. Helen Salvadore D'souza) .. Applicant
Vs.
Allied Automobile Works & Ors. .. Respondents

Ms. Shivani Soni i/b. Rakesh K. Singh for the applicant.
Ms. Mithila Damle a/w. Ms. Sharanya Shivaraman for the respondents.

CORAM : G.S. KULKARNI, J.
DATE : JUNE 21, 2022.

PC.:

1. This is an application filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties, which have arisen under the Deed of Reconstitution dated 23 February, 2005. Indisputably Salvadore D'souza was a party to such document. There is an arbitration agreement between the parties, which is contained in Clause 16 of the Deed, which reads thus:

"16. All disputes and differences which arise between the partners during the continuance of the business, including the question of interpretation and construction of this Deed and in relation to accounts between the partners during the partnership or at any other time, or on dissolution of the Partnership, shall be referred to arbitration in accordance with the provisions of Indian Arbitration Act of 1996 or any such statutory modification thereof for the time being in force."

2. The case of the applicant is that the respondents have acted in a

manner prejudicial to the interest of the original applicant. It is contended that such acts of the respondents were fraudulent inter alia by misuse of Power of Attorney, by which an attempt was made to reconstitute the firm without the consent and behind the back of the original applicant. These are some of the contentions on the basis of which the applicant intends to make a claim against the respondents in respect of partnership firm in question.

3. Learned counsel for the respondents has fairly submitted that although the respondents deny the allegations as made by the applicant, however, she would not dispute the existence of an arbitration agreement as also the notice invoking arbitration agreement.

4. In these circumstances, in my opinion, a case has been made for this Court to exercise jurisdiction under section 11(6) of the Act for appointment of arbitral tribunal. Hence, the following order:

ORDER

(i) Mr. Harish Pandya, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Deed of Reconstitution dated 23 February, 2005.

(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.

(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. Harish Pandya, Advocate
7B, Lentin Chambers,
4th floor, 36, Dalal Street,
Fort, Mumbai – 400 023.
Mob. no. 9821153409

[G.S. KULKARNI, J.]