

Prajakta Vartak

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

COMMERCIAL ARBITRATION APPLICATION NO. 238 OF 2021

Ananth Pai Kalsank ..Applicant
Vs.
Manoj Javeri Stock Broking Private Ltd. ..Respondent

Mr. Siddhesh Bhole with Mr. Varad Achwal i/b. SSB Legal & Advisory for Applicant.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 25, 2022.**

P.C.:

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 which have arisen between the parties under an agreement dated 21 June, 2017 which pertain to a stock broking arrangement between the parties. The arbitration agreement is contained in clause 45 of Annexure - 4 of such agreement which reads thus:-

“45. The stock broker and the client shall abide by any award passed by the Arbitrator(s) under the Arbitration and Conciliation Act, 1996. However, there is also a provision of appeal within the stock exchanges, if either party is not satisfied with the arbitration award.”

2. The claim of the applicant against the respondent is for an amount of Rs.1 Crore, however, despite repeated reminders for refund of the amount, the respondent did not make the payment of the said amount to the applicant. The applicant desired an exit. However, the payment was not forthcoming from the respondent. The applicant hence issued a

notice to the respondent dated 15 September, 2020 invoking the arbitration agreement and requested the respondent to refer the disputes to arbitration. The applicant also suggested the name of the learned sole arbitrator who can be appointed as an arbitrator. As the notice was not responded, the present application came to be filed.

3. On 14 February, 2022 this Court had heard the present proceedings, when an affidavit of service dated 11 February, 2022, as tendered on behalf of the applicant was taken on record, evidencing service of the proceedings on the respondent. However, as the respondent was not represented, the applicant was permitted to serve the respondent by substituted service. The Court had passed the following order:-

“1. Mr. Sakhardande, learned senior counsel for the applicant has tendered an affidavit of service dated 11 February, 2022 of Mr. Prathamesh Kate, evidencing service on the respondent. However the respondent is not represented.

2. In the circumstances, as explained by Mr. Sakhardande, the applicant is permitted to serve the respondents by substituted service, by publication. Accordingly, notice of the present proceeding be published in the local newspaper in vernacular and an affidavit of service be placed on record.

3. Stand over to **28 February, 2022.**”

In pursuance of the above order, the applicant has placed on record a further affidavit of service dated 23 February, 2022 evidencing service on the respondent by publication.

4. The application was thereafter listed for hearing on such backdrop on 23 March, 2022 and thereafter it was again adjourned for today. The respondent despite service/notice is not represented. There is no opposition to the present application. As also the averments as made in the application are required to be taken as uncontroverted.

5. As there subsists an arbitration agreement between the parties, as also there is proper invocation in accordance with law, in my opinion, the requirements of Section 11(6) of the Act are satisfied, for this Court to exercise the jurisdiction under the said provisions. It is clear that the respondent is not interested to oppose the present proceedings. The application thus would be required to be allowed. It is accordingly allowed by the following order:-

ORDER

- (i) Mr. Justice S. J. Kathawalla (Retd.) is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Agreement dated 21 June, 2017.
- (ii) The learned prospective 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:

“Present Address: Flat No.7, Rocky Hill Complex, Narayan Dabholkar Road, Malabar Hill, Mumbai – 400 006.

Permanent Address: Flat No.103, 10th Floor, 68-A Brij Kutir,

Rungta Lane, Opp. Regency Hotel, Nepean Sea Road,
Mumbai – 400 006.

Mobile No. 09619180563

E-mail: skathawalla@gmail.com”.

[G.S. KULKARNI, J.]