

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 2 OF 2020
AND
COMMERCIAL ARBITRATION PETITION NO. 9 OF 2020**

Rahul s/o. Arvind Vyas alias	
Rahul s/o. Dashrathlal Dave & Anr.	..Applicants
Vs.	
Rajesh Singh Rathod	..Respondent

Mr. Sushil Upadhyay i/b. Ashok Saraogi for Applicants/Petitioners.

**CORAM : G.S. KULKARNI, J.
DATE : JUNE 06, 2022.**

P.C.:

1. Commercial Arbitration Application No.2 of 2020 is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the applicants have prayed for appointment of an arbitral tribunal for adjudication of the disputes and differences which have arisen between the applicants and the respondent under a Deed of Partnership dated 27 May, 2015. The arbitration agreement is contained in clause 30 of the Partnership Deed which reads thus:-

“30. All disputes and differences whatsoever which shall arise between the partners or between the partners and the personal representatives of the deceased partner relating to any matter whatsoever touching the affairs of the partnership or the interpretation of this agreement and whether before or after the determination of the partnership shall be referred to a single arbitrator, if the parties agree upon one, otherwise to three arbitrators one to be appointed by each party to the difference in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory

modification or re-enactment thereof for the time being in force.”

2. By an order dated 09 October, 2019, this Court had issued a notice to the respondent, returnable on 7 November, 2019. In addition to the Court notice, learned advocate for the applicants/petitioners was also permitted to serve the respondent by private notice by all permissible means and place on record affidavit of service. Accordingly, steps were taken by the advocate for the applicants/petitioners to serve the respondent. An affidavit of service is placed on record. The proceedings were thereafter listed before this Court (G. S. Patel, J.) on 05 November, 2019 and thereafter on 19 November, 2019 when the following order came to be passed:-

“1. The petition and the application are unserved. Mr Mishra states that private service has been effected. An affidavit of service is necessary.

2. List the matter on 9th December, 2019.”

3. By a further order dated 28 January, 2020 passed by this Court (G. S. Patel, J.) accepting the request made on behalf of the applicants, leave to serve the respondent by substituted service was granted directing publication in two newspapers, one in English and one in the vernacular and an affidavit proving publication was to be placed on record. Accordingly, affidavit of Mr. Santosh Kumbhar dated 24 February, 2020 proving service on the respondent was placed on record. Thereafter the present application was listed before this Court (S. J.

Kathawalla, as His Lordship then was) on 06 March, 2020 when the proceedings were adjourned to 03 April, 2020 and thereafter they are before the Court today.

4. It appears that the respondent despite notice of the proceedings, is not interested to appear and contest the present proceedings. Also no reply affidavit is placed on record. In these circumstances, it would be required to be presumed that the respondent does not dispute the contentions as urged on behalf of the applicants as contained in the memo of the application.

5. Learned counsel for the applicants has drawn the Court's attention to the notice dated 30 September, 2019 issued on behalf of the applicant to the respondent invoking the arbitration agreement. In such notice the applicants having set out the nature of the disputes, called upon the respondent to appoint a sole arbitrator to adjudicate the disputes and differences which have arisen under the Deed of Partnership. The respondent did not respond to such request. Hence, the present application came to be filed. 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.

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

ORDER

(i) Mr.Yogeshwar S. Bhate, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Deed of Partnership dated 27 May, 2015;

(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:

“Flat no.17, 3rd floor, Om Dnyanesh CHS Ltd.

S.G.Barve Marg, Kurla (West),

Mumbai – 400 070.

Ph. : 022 26500508

E-mail: yogeshbhate@yahoo.co.in ”

6. There is also a Section 9 petition which is pending, however, no interim or ad-interim order is passed on such petition. As the Court has

already appointed an arbitral tribunal, it would be appropriate that the Section 9 petition is permitted to be converted into an application under Section 17 of the Act to be adjudicated by the arbitral tribunal. Accordingly, liberty to the applicants to present such application before the learned sole arbitrator. All contentions of the parties on such application are expressly kept open.

7. Both the proceedings are disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]