

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION (ARBN) NO.162 OF 2021

(Agastya Corporate Advisory Private Limited Vs. M/s Landmark Estate Developers
Ltd.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. C. A. Babrekar, Advocate for Applicant.
Mr. K. A. Kale, Advocate for Non-Applicant/Respondent.

CORAM: ROHIT B. DEO, J.

DATE: 25th FEBRUARY, 2022.

This application is preferred seeking appointment of Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (Act).

2. The non-applicant has filed an affidavit in response dated 22.01.2022 opposing the maintainability of the application *inter alia* on the ground that this Court has no territorial jurisdiction. The alternate submission is, that even if it is assumed that any part of the cause of action has arisen at Nagpur or within this court's jurisdiction, the arbitration clause restricts the jurisdiction to the court at Navi Mumbai, and the application would therefore have to be preferred before the Principal Bench.

3. While the learned counsel for the applicant Mr. Babrekar would argue that the jurisdictional clause only refers to venue and not seat, and would therefore, not preclude this court from entertaining the application, I am satisfied that even *de hors* the jurisdictional clause, this

application is clearly not maintainable since no part of the cause of action whatsoever arose within this court jurisdiction.

4. The contract in which the arbitration clause is incorporated is admittedly executed at Navi Mumbai. The contract purports to be for rendering services to facilitate the non-applicant to obtain loan. According to the applicant, having performed his part of the contract successfully, he was entitled to the payment of commission. According to the applicant certain post dated cheques were issued by the non-applicant which were dishonoured. In essence, the dispute is the recovery of money claim under the contract which is executed at Navi Mumbai.

5. The fact that the office of the applicant is at Nagpur would not cloth this court with jurisdiction, as is sought to be argued by Mr. Babrekar. The decision in *Afcons Infrastructure Ltd., Mumbai v. Konkan Railway Corporation Ltd., Mumbai*, which turns of Section 42 of the Act, is of no relevance whatsoever. The issue involved herein did not call for consideration in the said decision.

6. The application is dismissed with liberty to the applicant to approach the appropriate court.

JUDGE

NSN