

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

MISC. CIVIL APPLICATION NO. 598/2021

(Sudarshan S/o Kishorji Satpute Vs. Shri Janardhan S/o Parasram Sorde & anr.)

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

Court's or Judge's orders

Mr. S. A. Mohta, Advocate for applicant.
Mr. Y. Mandpe, Advocate for non-applicant Nos. 1 & 2.

CORAM : VINAY JOSHI, J.
DATED : 18/08/2022.

Heard.

2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole arbitrator. The applicant has entered into an agreement to sell dated 11.04.2011 with non-applicant about immovable property. In particular, the non-applicant agreed to sell the house property in consideration of Rs. 9,00,000/- and towards part consideration, Rs. 2,00,000/- has been paid by the applicant. Agreement to sell contains clause 12 for referring the dispute to sole arbitrator to be appointed by the purchaser i.e. applicant.

3. Since the transaction was not materialized, the applicant has allegedly issued a notice dated 19.04.2012 calling upon the non-applicant for appointing the arbitrator Mr. B. B. Sharma, Advocate as a sole arbitrator. The said notice was replied by the non-applicant on 01.05.2012 denying existence of transaction including arbitration clause.

4. It is applicant's case that he has already filed statement of claim to the named arbitrator i.e. Advocate Sharma in terms of Section 23 of the said Act which has been numbered as arbitration proceeding case No. 2/2012. It is submitted that the arbitration proceeding was going on, however in the year 2021, he received a communication dated 24.01.2021 from the son of arbitrator informing that sole arbitrator is no more. The said letter indicate that the arbitrator has expired on 27.07.2015 and no record is available regarding proceeding. On receipt of said communication, the applicant has applied to this Court for appointment of fresh arbitrator.

5. The other side resisted this application by disputing that the transaction itself including existence of arbitration clause. It is contended that the concerned transaction was hand loan transaction. The non-applicant also disputed that the arbitration proceeding was going on before the sole arbitrator.

6. Concededly, at present, there is nothing to vouch that in the year 2012 statement of claim has been filed and entertained by the sole arbitrator. The communication dated 24.01.2021 clarifies that record and proceeding is not available with the son of sole arbitrator. It was specifically communicated that the informant (son of arbitrator) was not aware about the pendency of the said proceeding. He has informed that from the year 2015 to 2020, there is no contact by parties relating to said proceeding.

7. It is apparent that even if the statement of claim is filed, the applicant never approached to the arbitrator during his life time or for five years next to his death. Apparently there is no live dispute to be referred to arbitrator.

8. In view of above, application stands rejected.

(VINAY JOSHI, J.)

Gohane

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