

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

MISC. CIVIL APPLICATION NO. 79 OF 2020

Sailee Builders __ Vs. __ M/s. Ganesh Gruha Narman Sahakari Sanstha

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

Court's or Judge's orders

Mr. Rohan Chandurkar, Advocate for applicant
Mr. Amol Mardikar, Advocate for the non-applicant.

CORAM : AVINASH G. GHAROTE, J.
DATE : 07/10/2022

1] Heard Mr. Chandurkar, learned counsel for the applicant and Mr. Mardikar, learned counsel for the non-applicant.

2] The execution of the agreement of development dated 16.12.1997 (page 13), is not in dispute, considering which the clause no. 21 as contained therein requiring the parties to resolve the dispute first by negotiation and thereafter by arbitration is also not in dispute. It is also not in dispute that the differences have cropped up between the parties hereto regarding the agreement dated 16.12.1997 on account of which a notice dated 21.4.2015 was issued by the applicant seeking the appointment of the arbitrator. This notice has been replied by the communication dated 5.5.2015, stating that the agreement in question stood cancelled. (page 25). It is thus apparent that there is a dispute between the parties. Proceedings were also initiated

under Section 9 of the Arbitration and Conciliation Act before the learned District Judge, which has been rejected by the order dated 12.8.2016 (page 37). The present application has been thereafter filed for appointment of an arbitrator.

3] In the instant case, the notice seeking appointment of an arbitrator was issued on 21.4.2015 (page 20). The refusal to appoint is 5.5.2015 (page 24). This application under Section 11 (6) of the Arbitration and Conciliation Act has been filed on 25.09.2019.

4] The Hon'ble Apex Court in **BSNL vrs. Nortel Networks India Pvt. Ltd. (2021) 5 SCC 738**, has held that there is a distinction between the limitation for an application under Section 11 (6) of the Arbitration and Conciliation Act and the limitation for the dispute and in a case of an application under Section 11(6) of the Arbitration and Conciliation Act, the limitation would start to run from the date when there is a refusal to appoint the arbitrator (para 13) and in such a case Article 137 of the Schedule to the Limitation Act would apply (para 14), which provides for a limitation of three years when the right to apply accrues. In the instant case, the right to apply under Article 137 of the Limitation Act accrued on the refusal of the non-applicant to appoint the arbitrator, which is reflected from the communication dated 5.5.2015 (page 24) and the subsequent

communication dated 2.6.2015 by the applicant (page 26), unequivocally demonstrates the receipt of this refusal, considering which the time can be said to have begun from 2.6.2015, in view of which the application under Section 11(6) of the Arbitration and Conciliation Act having been filed on 25.9.2019 was clearly beyond the period stipulated in Article 137 of the Limitation Act, in view of which, considering what has been held in **Norten Networks** (supra), the application would be barred by limitation and as such it is rejected. No costs.

JUDGE

Rvjalit