



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.85 OF 2022

Nilesh Shankar Wadekar

...Petitioner

Versus

Deepesh Anil Sheth & Anr

...Respondents

Ms. Kanchan Phatak h/f Mr. Nitin Deshpande for the Petitioner.
None for the Respondents.

CORAM Dr. Neela Gokhale, J.**DATED: 3rd October 2023****PC:-**

1. Ms. Phatak, learned Counsel appears for the Petitioner. None appears for the Respondents. The record in the case shows that as many as four adjournments were sought by the Respondents to file reply. No reply has been filed till date. Neither the Respondent nor his Counsel is present today when the matter is called out.

2. I have heard the learned Counsel for the Petitioner.

3. The Petitioner seeks appointment of an arbitrator to adjudicate the disputes that have arisen between the parties in respect of the partnership agreement dated 20th October 2011. The parties had executed a partnership agreement with an intention of

carrying on the business of a Health Club, preparing Health Juice, dealing in health products and equipments and all such activities relating to health and fitness etc. They took premises on lease and license basis at Kalewadi phata, Wakad, District Pune for their business activities.

4. Ms. Phatak says that as per the partnership agreement, it is only the Respondent No.2 who is entitled to withdraw a salary and neither the Petitioner nor the Respondent No.1 were permitted to withdraw any amount towards remuneration. There were some disputes amongst the parties regarding the business of the partnership firm and on a number of occasions, the Petitioner asked the Respondents to mutually settle the matter by an amicable settlement. The dispute still remained unsolved. Finally, by notice dated 16th March 2020 sent via e-mail by the Petitioner, the Respondents No.1 and 2 were called upon to give consent for the appointment of Hon'ble Mr. S. R. Sathe, retired Judge of this Court, for his appointment as sole arbitrator to resolve the dispute. Ms. Phatak states that although the notice was addressed only to Respondent No.1, the email was sent to both the Respondents. She states that both the Respondents received the email invoking arbitration clause and a reply to the notice was sent on behalf of both the Respondents. The notice reply sent by the Respondents through their Counsel is at page 106 of the Petition. They refused to refer the dispute to arbitration on the ground that there exists no arbitral subject matter.

5. I have heard Ms.Phatak and have gone through the documents with her assistance. Accordingly, I pass the following order:

ORDER

1. Smt. Nisha S. Ruikar, Advocate, appointed as a Sole Arbitrator to enter into reference and adjudicate the disputes between the parties arising out of the partnership agreement dated 20th October 2011. The seat of the arbitration shall be Pune.
2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.
3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.
4. All contentions of the parties on merits of the disputes are expressly left open.
5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to

the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.

6. The Petition is disposed of in the above terms. There will be no order as to costs.
7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

"Smt. Nisha S. Ruikar, Advocate,

Office No.14, 4th Floor, Shree Chambers,

Opp: Gate No.4 of Shivajinagar District Court,

Besides Family Court Bldg., Pune 411005,

Telephone No.02025533353,

OfficeMob:09422032300,

E-mail: nisha.ruikar@gmail.com;

ruikar.office@gmail.com"

(Dr. Neela Gokhale, J)