

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 204 OF 2021**

Kakollu Venkateswara Rao ... Applicant
vs.
Lalchand Hiralal Gupta and others ... Respondents

Ms. Reshma Nair a/w. Mr. Vivekanand Akshali, i/b. Devmani Shukla for applicant.

U. V. Singh, i/b. Anil R. Mishra for respondents.

**CORAM : MANISH PITALE, J.
DATE : 08th SEPTEMBER, 2023**

P.C. :

1. By this application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the applicant is praying for appointment of arbitrator in the light of an arbitration clause contained in a deed of partnership executed between the parties. It is submitted that the applicant invoked the arbitration clause by issuing notice on 06.02.2020. The applicant referred to an earlier communication, whereby the applicant claimed to have dissolved the firm and in that backdrop, the applicant proposed appointment of arbitrator for resolution of disputes between the parties. There was no response to the said invocation notice, despite the same being served on the respondents.

2. The learned counsel appearing for the applicant referred to the aforementioned documents and submitted that this Court may exercise jurisdiction under Section 11(6) of the said Act to appoint a sole arbitrator.

3. Learned counsel for the respondents submitted that an arbitration proceeding is already pending before a sole arbitrator and that according to

the respondents, all the outstanding disputes between the parties, have been settled before the said arbitrator. In that light, it is submitted that the prayer made in the present application, may not be granted. Attention of this Court is invited to a letter dated 31.01.2020, in response to the dissolution notice given by the applicant, to contend that the consent terms were already signed in the earlier arbitration proceedings and that the applicant had also acted upon the same.

4. This Court has perused the said communication dated 31.01.2020. Although there is a reference to settlement of disputes between the parties as per the consent terms signed in the pending arbitration proceeding, allegations have been made against the applicant, including an allegation of fraud.

5. The pendency of the earlier arbitration proceeding, cannot come in the way of the applicant pressing for appointment of arbitrator in the present application, simply for the reason that the earlier arbitration proceeding is pending since the year 2015 and the invocation notice was issued on 06.02.2020, in pursuance of the dissolution notice issued by the applicant. The nature of disputes are distinct and they appear to have arisen much after the earlier arbitration proceedings were initiated in the year 2015. Therefore, the objections raised on behalf of the respondents, are unsustainable.

6. This Court finds that clause 23 of the deed of partnership, indeed requires the resolution of disputes through arbitration. Invocation notice dated 06.02.2020 is on record, whereby the applicant has invoked arbitration. Admittedly, there was no response to the said notice.

7. Hence, the facts and circumstances of the present case, show that this Court can certainly exercise jurisdiction under Section 11(6) of the said Act, as the agreed procedure for appointment of arbitrator, has failed.

8. In view of the above, the petition is allowed. Considering the nature of claims raised on behalf of the applicant, it would be appropriate that a former Judge of this Court, is appointed as a sole arbitrator.

9. Accordingly, Smt. Justice Sadhana Sanjay Jadhav, former Judge of this Court, is appointed as the sole arbitrator for resolution of disputes between the parties. Details of the learned arbitrator are as follows:

110, Prospect Chambers, D.N. Road,
Fort, Mumbai – 400 001.

10. The parties undertake to inform the learned arbitrator about the order passed today at the earliest.

11. The learned arbitrator is requested to submit her consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Prothonotary and Senior Master of this Court. The fees of the learned arbitrator shall be as per the Fourth Schedule to the said Act.

12. All questions are left open for determination by the learned arbitrator.

13. The application stands disposed of.

(MANISH PITALE, J.)

Priya Kambli