

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 209 OF 2021**

Mahmood Hussain Sirazi ... Applicant
vs.
Farah Publicity and another ... Respondents

Mr. Priyank Shukla for applicant.

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

P.C. :

. By this application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the applicant has approached this Court for appointment of arbitrator in the light of a deed of partnership executed between the applicant and respondent No.2.

2. Respondent No.1 is the partnership firm and the record shows that respondent No.2 is served, while respondent No.1 is unserved. But, since the applicant and respondent No.2 are the only partners of respondent No.1-partnership firm, service of notice on respondent No.1 is dispensed with. In real terms, it is only the respondent No.2, who is the contesting respondent, in the facts and circumstances of the present case.

3. The learned counsel for the applicant submits that despite service, respondent No.2 has chosen not to appear before this Court and that the documents on record would show that respondent No.2 never disputed the existence of the arbitration agreement, but there was disagreement on initiation of the arbitration proceedings and appointment of arbitrator.

4. This Court has perused the documents on record. Clause 20 of the deed of partnership dated 16.11.1998 provides for resolution of disputes between the parties by arbitration. On 04.01.2021, the applicant issued a notice to the respondent No.2, invoking the arbitration clause and contending that the firm deserved to be dissolved. Respondent No.2 sent an email communication responding to the invocation notice, stating that the said respondent definitely wanted to appoint an arbitrator, but since he was busy with family matters, he could not take up the issue. On 11.02.2021, the applicant caused another notice to be issued to respondent No.2 to which, the said respondent sent an email, but he did not agree to appointment of an arbitrator. In these circumstances, the present application was filed before this Court.

5. As noted hereinabove, respondent No.2 has chosen not to appear before this Court. This Court is inclined to consider the present application on its merits.

6. The deed of partnership indeed contains an arbitration clause, which stipulates that disputes between the parties would be resolved by arbitration. Invocation notices are on record to which respondent No.2 sent responses, but the arbitrator could not be appointed. In that light, this Court is entitled to exercise jurisdiction under Section 11(6) of the said Act, for appointment of arbitrator.

7. In view of the above, the application is allowed. Considering the extent of claims raised by the applicant in the present case, it would be appropriate that an advocate practising in this Court is appointed as the sole

arbitrator. On the suggestion of the learned counsel for the applicant, Advocate K. L. Vyas is appointed as the sole arbitrator. Details of the learned arbitrator are as follows:

Room No.10-A, Cabin No.06,
Kalaghoda building,
Fort, Mumbai.
Mob.: 8169255988

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

9. The learned arbitrator is requested to submit his 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.

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

11. The application stands disposed of.

(MANISH PITALE, J.)

Priya Kambli