



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

53 ARBITRATION APPLICATION NO. 12 OF 2023

MR.SK.MUJTABA FAROOQ S/O. ABDUL WAHAB

VERSUS

MR.SALEEMUDDIN SIDDIQUI S/O.RASIDUDDIN SEDDIQUI

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Advocate for Applicant : Mr. Nandedkar Devanand Y.

Advocate for Respondents : Mr. Taher Ali Quadri

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CORAM : ARUN R. PEDNEKER, J.

DATE : 09<sup>th</sup> SEPTEMBER, 2024

PER COURT:

1. Heard.
2. The parties have entered into an agreement dated 28.09.2004. The dispute arising out of the said agreement are to be resolved through arbitration. Clause 12 of the said agreement provides for resolution of dispute through arbitration and it is quoted as under:

***“12. All difference and disputes relating to the partnership or its dissolution arising out of this deed shall be resolved by arbitrator under Arbitration Act: 1940 or law prevailing in its place at that time and the decision of the Arbitrator shall be final and binding on all the partners.”***
3. In pursuance of the dispute, notice is issued for appointment of the arbitrator dated 02.05.2023 by the applicant. However, the said notice dated 02.05.2023 is not responded to by the respondents.

As such, the present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 is filed for appointment of the arbitrator.

4. The learned counsel appearing for the respondent submits that since the agreement is an unregistered document, the same cannot be relied upon and arbitrator cannot be appointed. However, the Hon'ble Supreme Court in Curative Petition (C) No.44 of 2023 has held as under:

***“M. Conclusions***

***224. The conclusions reached in this judgment are summarised below:***

***a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;***

***b. Non-stamping or inadequate stamping is a curable defect;***

***c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;***

***d. Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and***

***e. The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent.”***

5. In the agreement dated 28.09.2004 between the parties, there is the arbitration clause for resolution of dispute as noted above. Accordingly, the civil application is disposed of with following order :-

**a) Appointment of Arbitrator :-**

Justice Shri Sunil P. Deshmukh, Former Judge of this Court is appointed to act as sole arbitrator to adjudicate upon the disputes between the parties.

**(b) Communication to Arbitrator of this order :-**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses :-

Arbitrator : Hon'ble Shri Justice Sunil P. Deshmukh,  
former Judge of this Court.

Address : "Neel Prabha", Bhagyanagar,  
Near Green Olive Hotel, BS Road,  
Chh. Sambhajinagar, (MS) 431 001

Phone : 9545028282

Email : sunilpdeshmukh@gmail.com

**(c) Disclosure :-**

The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Registrar of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Registrar on the file of this application. Copies will be given to both sides.

**(d) Appearance before the Arbitrator :-**

Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

**(e) Contact/communication information of the parties :-**

Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

**f) Section 16 application :-**

The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

**(g) Interim Application/s :-**

(i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

**(h) Fees :-**

The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

**(i) Venue and seat of arbitration :-**

Seat of the arbitration would be governed by the provisions of the agreement executed between the parties.

**[ARUN R. PEDNEKER, J.]**