

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 37 OF 2019

M/s. TNS Ventures through its partner Trimbak
Bhimashankar Chippa & Anr. ...Petitioners
Versus
Sumit Mukund Upadhye ...Respondent

Mr. Samir Kumbhakoni for the Petitioners.
Mr. Shrishail Sakhare for the Respondent.

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by
HUSENBASHA
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Date: 2024.09.12
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CORAM : M.M. SATHAYE, J.

DATE : 11 SEPTEMBER 2024

P.C. :

1. Heard learned counsel for the parties.
2. This is a petition for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 ('the said Act' for short).
3. Learned counsel for the Petitioners, relying on the Clause 29 of the partnership deed dated 6 May 2015, has submitted that the dispute between the parties is referable to the arbitration. Apparently, the dispute between the parties is inter alia in respect of expulsion of the partner and loss caused to the partnership firm.
4. Learned counsel for the Respondent, on the other hand, invited this Court's attention to Clauses 28 & 29 of the partnership deed and submitted that joint reading of Clauses 28 & 29 would unequivocally indicate that the dispute between the partners is agreed to be

resolved by mutual consent / understating and it is only when there is dispute about 'the interpretation of the clauses' of partnership deed, the arbitration is provided.

5. I have perused Clauses 28 & 29 of the partnership deed. There is merits in what is submitted by Respondent. The dispute emerging from the case is not about interpretation of the clauses of partnership deed but it is about expulsion of partner and about loss caused to the partner/s, amongst other things.

6. Apart from the aforesaid facts, it is pointed out by the learned counsel for Respondent that Respondent has filed a civil suit (R.C.S.No. 962/2017) against the Petitioners who had filed an application (Ex.10) u/s. 8 of the said Act, for referring the matter to arbitration. By order dated 12 October 2018, the learned Civil Judge has held that the dispute is not about interpretation of clauses but it is in respect of expulsion etc. as indicated above. Therefore, the application under Section 8 has been rejected. It is also the contention of the Respondent in the reply-affidavit that the said order of Civil Court (rejecting the application under Section 8) was challenged by the Petitioners, however the challenge was withdrawn; no record is brought to the notice of the Court to controvert this position.

7. Additionally, it is pointed out from reply-affidavit that thereafter on 1 November 2019, written statement is filed on merits by the Petitioners, in which reference is made to refusal of their Section 8 – application and resultant filing of detailed written

statement. It is therefore clear that the Petitioners have submitted to the jurisdiction of the Civil Court.

8. In view of the aforesaid facts and circumstances and the interpretation of Clauses 28 and 29 as indicated above, and further in view of the reference under section 8 being rejected by the Civil Court, which rejection is accepted by the Petitioners thereby submitting to the jurisdiction of the Civil Court, there is no merit in the present petition. The petition is therefore rejected. No costs.

9. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)