

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.6 OF 2023

Chandrakant Zunjarrao	]	..	Petitioner
vs.			
M/s.Punyodya Paradise Through its			
Partners Harakchand Jain & Ors.	]	..	Respondents

mr.Mainak Adhikary for the Petitioner.
Mr.Aniruddha Garge with Kashyap Bhalerav for Respondent No.1.

CORAM : BHARATI DANGRE, J

DATE : 30th APRIL, 2024.

P.C.

1] The present Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes that have arisen between the Parties out of the Sale Agreement dated 15.11.2007 and 17.03.2009, is a classic case of a dead claim, which smacks of malafide attempts on part of the Applicant to invoke arbitration.

In the wake of the Agreements referred to above, since the disputes arose out of the said Agreements, the Applicant approached

the trial Court and instituted the Suit and since the Application for interim relief (Exhibit 5) came to be rejected, Appeal against Order (AO) was instituted before this court, which was permitted to be withdrawn since the statement was made on behalf of the Appellant that Clause 22 in the Agreement provides arbitration as a mode for settlement.

Even the Suit before the Trial Court was permitted to be withdrawn, and it is specifically recorded that the Parties shall jointly appear before the Trial Court and bring this order to its notice.

2] Pursuant thereto, the Petitioner/Appellant approached the Trial Court and prayed for withdrawal on the ground that a mutual settlement has been effected between the parties.

The learned Joint Civil Judge, Senior Division, hence on 21.03.2017, recorded to the following effect :

“Considering the facts, especially the orders of Hon’ble High Court, I am not inclined to impose costs to the plaintiff. The plaintiff has submitted that he wants to withdraw the suit as there is amicable settlement between them. Hence, as per him, he wants to withdraw the suit voluntarily”

3] Thereafter, the Plaintiff filed Miscellaneous Review Application, seeking recall of the said order, which was rejected by an order dated

09.08.2018, by recording that there is no manifest error on the face of the record and therefore the application do not fall within the ambit of Section 114 of the Code of Civil Procedure.

Being aggrieved, he filed a Writ Petition before this Court, which was also withdrawn on 04.11.2019, unconditionally.

4] It is, in this background facts, the Applicant invoked arbitration, by addressing the notice to the Respondent on 16.11.2019 and nominated an Arbitrator to resolve the disputes. The Application seeking appointment of the Arbitrator under Section 11 of the Act of 1996 is filed in the year 2023.

5] The Hon'ble Apex Court in case of **Bharat Sanchar Nigam Limited & Anr. vs. Nortel Networks India Pvt. Ltd.**¹ has clearly held that though the scope of examining the matter at the stage when the reference is sought under Section 11(6) is limited, but definitely an unfaithful claim or a claim which is ex facie time barred shall not be referred for arbitration and in present case is one such claim.

I am convinced on being guided by the observations of the Apex Court, that this is not a case where the prayer for appointment of an Arbitrator shall be entertained, the claim being prima-facie a dead claim

¹ (2021)5 SCC 738

and also on the ground that he agitated the grievance which he is attempting to put forth before the Arbitrator and it has reached finality.

Arbitration Petition is, therefore, dismissed.

[BHARATI DANGRE, J]