



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.238 OF 2024

Tata Capital Financial Services Ltd. ...Applicant

Versus

Ganesh Maruti Kshirsagar ...Respondent

Mr. Nikhil Mehta, i/b. KMC Legal Venture, for the Applicant.
None for the Respondent.

CORAM Dr. Neela Gokhale, J.
DATED: 29th November 2024

PC:-

1. The Petitioner seeks appointment of a sole Arbitrator to adjudicate and resolve the dispute arisen between the parties in respect of the Loan Agreement bearing No.TCFUC0631 000010979975 dated 18th January 2021. The Respondent has taken a loan from the Applicant for purchase of a car and has not repaid the same in terms of Agreement.

2. By order dated 16th January 2024 passed by this Court, notice was issued to the Respondent returnable on 15th February 2024. Humdast was granted and the Petitioner was also permitted to serve the Respondent by private notice including via e-mail. Accordingly, the Petitioner has served the

Respondent and has placed on record an Affidavit of service along with proof of service. The Respondent is absent despite having been served the notice of the present Application. In these circumstances, the matter is heard *ex parte* against the Respondent.

3. Mr. Nikhil Mehta, learned counsel appearing for the Applicant draws to my attention the Agreement containing the Arbitration Clause. Clause 13 of the Agreement deals with reference of any dispute to arbitration. Clause 13 of the Agreement reads as under:

“13. Arbitration:

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held at the place as mentioned at Serial No.13 of Annexure 1 hereto in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors.”

4. Since the Respondent failed to repay the balance amount and committed default, the Applicant, by notice dated 31st July 2023 called upon the Respondent to repay the outstanding dues, failing which it will invoke the Arbitration Clause contained in the Agreement. The Applicant also proposed the name of one Shri.N.K.Chavan to be appointed as a sole Arbitrator. Despite receiving the notice, he neither replied nor did he come forward to refer the dispute to arbitration. In these circumstances, the Applicant is compelled to file the present Application seeking relief, as prayed.

5. I have heard learned counsel for the Applicant and have perused the record with his assistance.

6. Considering the averments in the Application as well as the contents of the documents, it is apparent that despite existence of the Arbitration Clause in the Agreement and the Applicant having invoked the said clause to resolve the dispute between the parties, the Respondent has failed to refer the dispute to the arbitration. Hence, I pass the following order:

ORDER

1. Ms. Shreya Jha, Advocate is appointed as a Sole Arbitrator to enter reference and adjudicate the dispute between the parties out of the Loan Agreement bearing No.TCFUC0631000010979975

dated 18th January 2021. The seat of the arbitration shall be Mumbai as agreed by the parties in Sr.No.13 of Annexure-1 of the Agreement.

2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.
3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.
4. All contentions of the parties on merits of the disputes are expressly left open.
5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
6. The Petition is disposed of in the above terms. There will be no order as to costs.

7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

**“Ms. Shreya Jha, Advocate,
Chamber Address: 1D/E, 1st Floor,
Lentin Chambers, Dalal Street,
Fort, Mumbai.
Email: shreyajha183@gmail.com
Mobile No.7282934554.”**

(Dr. Neela Gokhale, J)