

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION APPLICATION NO.111 OF 2024

Amit Vengilat .. Applicant.
v/s.
Rajesh Nagpure & Another .. Respondents.

Mr. Nikhil Wable with Ms. Parita Mashruwala i/b. Jayakar & Partners, for
the Applicant.

CORAM: FIRDOSH P POONIWALLA,J.
DATE : 9th SEPTEMBER, 2024.

SMITA
RAJNIKANT
JOSHI

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SMITA RAJNIKANT
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Date: 2024.09.11
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PC:-

This Application has been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (“the Act”) seeking appointment of an Arbitrator to arbitrate upon all disputes and differences that have arisen between the parties under an Agreement dated 10th June, 2022 (“the said Agreement”) entered into between them.

2 Under the said Agreement, the Applicant had agreed to lend monies to the Respondents. Clause 32 of the said Agreement contains an Arbitration clause, which reads as under:-

“ All disputes and differences arising out of, or in connection with this Agreement, including but not limited to the breach, interpretation, validity and termination of this Agreement, shall be referred to a Sole Arbitrator to be mutually appointed by the parties. The seat and venue of the arbitration proceedings shall be in Mumbai. The language of the arbitral proceedings shall be English. The proceedings

shall be governed by the Arbitration and Conciliation Act, 1996 (as amended)."

3 It is the case of the Applicant, that under the said Agreement, the Applicant had lent a total amount of Rs.1,43,68,708/- to the Respondents.

4 Thereafter, since the Respondents did not comply with their obligations under the said Agreement, by a letter dated 17th January, 2024, the Applicant called upon the Respondents to comply with their obligations under the said Agreement and cautioned them that, if they failed to do so, then the Applicant would be constrained to initiate appropriate proceedings as agreed in the said Agreement.

5 The said letter dated 17th January, 2024 was replied to by both the Respondents separately. Respondent No.2 replied to the said letter by a letter dated 8th February, 2024. In the said letter, the main contention of Respondent No.2 is that he had not entered into the said Agreement, as alleged by the Applicant.

6 Respondent No.1 also replied to the said letter dated 17th January, 2024 by a letter dated 8th February, 2024, whereby Respondent No.1 stated that he had entered into an Agreement with the Applicant, under which the consideration value agreed upon was actually Rs.2,80,00,000/- and further alleged that that Agreement had been terminated by the Applicant.

7 In the light of the aforesaid letters addressed by the Respondents, by a letter dated 27th March, 2024 addressed to the

Respondents, the Applicant invoked Arbitration under Clause 32 of the said Agreement, nominated his Arbitrator and requested the Respondents to concur with the appointment of the said Arbitrator within 30 days of the receipt of the said letter.

8 The said letter dated 27th March, 2024 was replied to by Respondent No.2 by a letter dated 18th April, 2024. By the said letter, Respondent No.2 alleged that the said Agreement is fraudulent and contains falsified or forged signatures purported to be that of Respondent No.2.

9 Respondent No.1 also replied to the said letter dated 27th March, 2024 by a letter dated 18th April, 2024. Although Respondent No.1 had not, in his earlier letter dated 8th February, 2024, denied his signature on the said Agreement, by way of this letter dated 18th April, 2024, Respondent No.1 took a different stand and stated that his signature on the said Agreement was forged.

10 In this factual scenario, the Applicant has filed the present Application.

11 I have heard Mr. Nitin Wable, the learned Counsel appearing on behalf of the Applicant. The Respondents, though served, have chosen to remain absent. The learned Counsel appearing for the Applicant has filed an Affidavit on Service dated 18th July, 2024, proving service of this Application on the Respondents.

12 A perusal of the said Agreement dated 10th June, 2022 entered into between the parties clearly shows that the Applicant and the Respondents are the parties to the said Agreement and have signed the said Agreement at various places. The said Agreement also contains an Arbitration clause i.e. Clause 32 thereof.

13 The defences raised by the Respondents in their letters replying to the letter dated 27th March 2024 invoking Arbitration, apart from being contradictory, are all defences which can be considered by the Arbitrator. The said Agreement contains signatures of the parties and whether the said signatures are genuine or forged is something which is within the jurisdiction of the Arbitrator.

14 Since there exists a valid Arbitration Agreement between the parties, since disputes and differences have arisen between the parties and since the Applicant has invoked Arbitration by his letter dated 27th March, 2024, an Arbitrator will have to be appointed to arbitrate upon the disputes and differences arising between the parties under the said Agreement dated 10th June, 2022.

15 In the aforesaid circumstances, and for the aforesaid reasons, the following orders are passed:-

- (a) Mr. Akshay Patil, an Advocate practising in this Court, is appointed as the Arbitrator to arbitrate upon the disputes and differences between the parties under the said Agreement dated 10th June, 2022. The contact details of Mr. Akshay Patil, who is appointed as an Arbitrator, are as under:-

Name :- Mr. Akshay Patil, Advocate
Mobile No. :- 98922 52175
Email :- ap.akshay@gmail.com
Address :- 6A, Sindhu House,
3/5, Nanabhai Lane,
Fort, Mumbai 400 001.

- (b) The Advocate for the Applicant shall intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order;
- (c) In addition, the Office of the Prothonotary and Senior Master of this Court shall also intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order.
- (d) The Arbitrator so appointed to make the disclosure as required under the provisions of the Act within a period of one week from the date of intimation of his appointment;
- (e) The Arbitrator shall charge fees as per the Rules framed by this Court in that regard;

16 The Arbitration Application is disposed of in the aforesaid terms. There will be no order as to costs.

(FIRDOSH P. POONTWALLA,J.)