



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO. 15 OF 2024

Sandeep Purshottam Nishane

VERSUS

Swapnil Ramesh Bhale

Mr. B. B. Kulkarni, Advocate for applicant

Mr. Rahul Joshi, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 03rd January, 2025

PER COURT :-

1. This application is for appointment of arbitrator under Section 11 of Arbitration and Conciliation Act, 1996 (in short, "**the Act**"). It is a case of the applicant that there was partnership deed executed on 28/02/2020 before applicant & respondent as per clause 16 of the said agreement, the disputes between the partners of any nature whatsoever are referable to arbitration.

2. Learned counsel for the applicant submits that in view of clause 16 of the agreement of partnership, and as there is dispute between the parties, it appears from notice dated 20.12.2022 in exercise of powers under Section 11 of the Act, arbitrator be appointed.

3. Learned counsel for the respondent opposed the said submissions by pointing out clause No. 16 of notice dated 29.11.2022

which according to him indicates that the partnership is already resolved and as such, for want of existence of dispute between the parties about partnership, it cannot be referred for the decision of arbitrator. He also contends that the applicant has not shown the nature of dispute which is referable to the arbitrator.

4. Section 11 of the Act enables this Court to appoint the arbitrator in case there is arbitration agreement between the parties and parties are not in agreement for appointment of an arbitrator. Clause 16 of the agreement is relevant which reads thus:

16. Arbitration:- That in the event of any dispute between the parties or their legal representatives about the interpretation of this deed. of their rights and liabilities there under or any matter whatsoever touching upon the partnership affairs whether in course or on or about termination of the partnership or thereafter shall be settled by arbitration and the provisions of the Indian Arbitration Act, shall apply in that behalf.

This clause more than sufficiently prima facie demonstrates that the disputes not only during the existence of the partnership but also after dissolution thereof are referable to the arbitrator. Moreover, applicant had issued notice dated 20.12.2022 invoking arbitration Clause and also suggesting name of Arbitrator. This notice is replied by respondent on 22.12.2022, rejecting the appointment of arbitrator, suggested by applicant. In fact, the respondent has stated in the reply to

communicate the name of arbitrator in 15 days. Thus, here exist dispute between the parties about appointment of Arbitrator.

5. This Court does not find substance in the contention of learned counsel for the respondent that the nature of dispute is required to be spelt out before this Court for the purpose of appointment of arbitrator. In this regard reference can be made to Section 16 of the Act, which empowers Arbitral Tribunal to rule on its jurisdiction. This includes the issue sought to be raised about the competence of tribunal to decide the nature of dispute arbitrable. Thus, the said issue can be raised before the Arbitral Tribunal.

6. Suffice it to say that apparently there is valid agreement of arbitration between the parties and since parties are not in agreement to the appointment of Arbitrator, this is apt case to appoint an Arbitrator.

7. Hence application stands allowed in terms of prayer clause 'A'.

8. By consent of both sides, Shri Mukul S. Kulkarni, learned Advocate, is hereby appointed as Arbitrator.

(R. M. JOSHI, J.)

bsj