



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

902 ARBITRATION APPLICATION NO. 12 OF 2024

Mahesh Enterprises

Through Its Director Mahesh Kumar Manchak Munde

Age : 35 Occu : Business

Having its register Office at Mahesh Complex,

ShivajiChowk, Parli-Vaijinath Dist.Beed

...Applicant

VERSUS

Vina Electricals Pvt Ltd

Through Its Director

Mr.Dilip S/o. Nathrao Gitte

R/o. Yogeshwari Wasaht,

Near Bhagwanbaba Chowk,

Parli Vaijinath Road,Ambajogai,

Tal. Ambajogai Dist. Beed

...Respondent

...

Mr. Kishor D. Khade, Advocate for Applicant

Mr. G. K. Naik Thigle, Advocate for R/sole

...

CORAM : ROHIT W. JOSHI, J.

DATE : 7th AUGUST, 2025

ORAL JUDGMENT.:

1. The applicant and the respondent had entered into an agreement dated 01.06.2017 under which the respondent had sub-let certain work of installation of transmission lines of MSEDCL to the applicant. It needs to be mentioned that the respondent is also a sub-contractor of an entity named Shravan Electricals who is the principal contractor appointed by the MSEDCL. Clause 21 of the agreement dated 01.06.2017 provides a resolution of disputes between parties by way of arbitration.

2. The applicant had issued notice dated 10.10.2023 raising certain

demands for payment of money in terms of the agreement dated 01.06.2017. Since money was not paid as demanded, the applicant invoked arbitration clause under the agreement dated 01.06.2017 by issuing notice of concurrence dated 24.01.2024. The respondent has issued a reply notice dated 25.10.2023 denying the claim of the applicant as raised in the notice dated 10.10.2023.

3. The learned Advocate for the respondent opposes the application on the ground that there exists no dispute between the parties warranting appointment of an Arbitrator. The learned Advocate had placed reliance on two agreements dated 20.07.2020 and 30.11.2021 in support of his contention.

4. The learned Counsel for the applicant has filed an affidavit in rejoinder disputing his signature over the said agreement dated 20.07.2020 and 30.11.2021. In sum and substance the contention of the learned Counsel for respondent is that the agreement dated 01.06.2017 and also the arbitration clause in the said agreement are no longer in existence and therefore, question of appointment of arbitrator does not arise. The learned Advocate for the respondent also states that appointment of arbitrator cannot be made because the agreement between the applicant and respondent is dated 01.06.2017 and the agreement between the respondent and the principal contractor is dated 20.06.2017 which is subsequent to agreement dated 01.06.2017.

5. As regards the contention with respect to the dates on which the agreement between the respondent and the principal contractor is executed and the date on which agreement between the applicant and respondent is executed, the same cannot have any relevance for the

present proceedings which concern only with appointment of arbitrator. The respondents may raise the said contention before the Arbitral Tribunal if it so desires.

6. The principal objection of the respondent is that there is novation of the contract i.e. agreement dated 01.06.2017 by virtue of subsequent two agreements dated 20.07.2020 and 30.11.2021, the learned Advocate for the respondent referring to the covenants in the said documents contends that the applicant had specifically confirmed in the agreement dated 20.07.2020 that there was no subsisting dispute between the parties in relation to agreement dated 01.06.2017 and accordingly the arbitration clause under the said agreement stood terminated. The learned Advocate for the respondent refers to the subsequent agreement dated 30.11.2021 and particularly refers to the page no.3 of the said agreement where it is stated that there is no subsisting dispute between the parties under agreement dated 01.06.2017 and that the said agreement has come to an end. The subsequent agreement dated 30.11.2021 also refers to agreement dated 20.07.2020 and particularly to the covenant in the earlier agreement where under the parties have arrived at concurrence that the arbitration clause also stands terminated with the settlement of claims.

7. As stated above, the applicant has filed rejoinder affidavit disputing his signatures on the subsequent agreements dated 20.07.2020 and 30.11.2021. He has contended that the said documents are false and fabricated documents.

8. It is well settled that when existence of arbitration agreement is required to be decided on an enquiry into facts, it is not open for a

Court entertaining application under Section 11(6) of the Arbitration and Conciliation Act, 1996 to venture into the said enquiry. In a nutshell the defense raised by the respondent is one of accord and satisfaction and novation of contract both of which, in view of denial of subsequent agreements, are mixed questions of law and facts. Such mixed questions of law and facts cannot adjudicated in a proceedings under Section 11(6) Act.

9. In view of the above, keeping the above objection open to be agitated before the learned Arbitral Tribunal, in my considered opinion the application will have to be **allowed**.

10. At this stage, both the parties were called upon to suggest a name of the Arbitrator and the learned Advocates appearing for both the parties have unanimously suggested the name of Justice Shri. Sunil P. Deshmukh, Former Judge of this Court to be appointed as sole arbitrator.

11. In view of the above, the application is allowed constituting arbitral tribunal comprising of Justice Mr. Sunil P. Deshmukh, Former Chief Justice as Arbitrator. It is reiterated that all contentions on merits as well as subsistence of arbitration clause are kept open. Petitioner is directed to pay process court fee to be computed of this court.

[ROHIT W. JOSHI J.]