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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 17 OF 2025

Vijay Baburao Patil

...Petitioner

Versus

Babasaheb Vinayak Kenjale

...Respondent

Mr. Rushikesh C. Barge *for the Petitioner.*

Mr. Shreyas P. Barsawade (Through V.C.) *for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 18, 2025

PC :

1. This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under an agreement dated March 21, 2007. The arbitration agreement is contained in Clause 10 (found at Page 31 of the Application), copy of which is typed at Page no.34. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. The arbitration agreement names two individuals to act as an arbitrator. Learned Counsel for the Respondent informs the Court that one of them is his father and the other person is related to the Petitioner. In these circumstances, neither of the two named arbitrators would be qualified to act as arbitrator.

3. Learned Counsel for the Respondent submits that the agreement cannot be relied upon because on the face of it, it purports to be notarized whereas it was never notarized. The second objection is that the

original agreement must be produced. I am of the view that these are not at all objections that are relevant to the Section 11 Court, when it is writ large on the face of the record that an arbitration agreement is in existence.

4. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the decisions of a seven-judge bench in the *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899*¹ followed by multiple others, including *SBI General Insurance Co. Ltd. vs. Krish Spinning*² and *Ajay Patel vs. Jyotrindra Patel*³ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

5. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid agreement dated March 21, 2007 to arbitration by a Sole Arbitrator.

6. It is seen from the record that there is no denial of the existence of the arbitration agreement looking to the limited scope under Section 11(6) of the Act. Consequently, leaving all contentions open including the right to file an Application under Section 16 of the Act, this Petition is ***finally disposed of*** in the following terms:-

A] Mr. Vaibhav Charalwar, a learned advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and

¹ (2024) 6 SCC 1

² 2024 SCC OnLine SC 1754

³ 2024 SCC OnLine SC 2597

in connection with the Agreement referred to above;

Email ID : vaibhavcharalwar@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from today. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Petitioner so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Petition and a copy of the same shall be furnished by the Advocates for the Petitioner to the Respondent;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

7. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

8. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]