

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.172 OF 2024

Shreesh Anant Ghatpande

....Petitioner

Versus

Balkrishna Kankar Thorat & Ors.

...Respondents

Mr. Sohan Gunjal, *for Petitioner.*

Mr. Tejas D. Deshpande *a/w. Ronak K. Utagikar, for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : DECEMBER 22, 2025

ORDER :

1. This Petition has been 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 October 16, 2014. The arbitration agreement is contained in Clause 2 (found at Page 23 of the Petition) of the Agreement. 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. It is apparent from the record that the arbitration agreement was invoked by Petitioner on July 24, 2024.

3. At first blush, this may appear to be a case of making a reference, leaving the matter of substantive existence to the Arbitral Tribunal for consideration under Section 16 of the Act. However, the arbitration agreement exists for a very limited purpose, namely, any dispute involving the quantum of determination of lease rental once parties have reached consensus on the extension of the lease. It is undisputed that the lease expired on April 20, 2016.

4. The predecessor-in-title of the Petitioner appears to have already filed an Arbitration Petition in 2015 being Arbitration Petition No.33 of 2015, which was then withdrawn in 2017. Thereafter, the parties are also engaged in a dispute in Civil Suit No.145 of 2020, whereby the Respondents have sought recovery of possession of the leased land. No application under Section 8 of the Act has been filed in the said Suit.

5. Therefore, considering the limited scope of the arbitration agreement; the existence of the arbitration agreement being only in relation to the disputes over the lease rental to be agreed upon, subject to there being consensus on extension of the lease deed; the Suit having been pursued without filing an application under Section 8 of the Act; and the parties evidently being at loggerheads about the extension itself, the very existence of the jurisdiction fact for the arbitration agreement to come into existence, appears to be missing.

6. In these circumstances, I am not satisfied that a case has been made out to show existence of the arbitration agreement for purposes of making the reference. The invocation letter is also sketchy and merely speaks about lease rental without giving regard to the fact that the parties are locked in a conflict over whether at all the lease term should be renewed.

7. In these circumstances, I am of the view that a case of existence of the arbitration agreement has not been made out within the contours of Section 11(6A). Moreover, having engaged in Civil Suit No.145 of 2020, without having filed an application under Section 8, it would not be appropriate to make a reference to arbitration in the peculiar facts and circumstances of this case.

8. The Petition, is therefore, *finally disposed of* without making a reference.

9. 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.]