

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.197 OF 2024

Arun Ramlal Yadav & Anr.

...Petitioners

Versus

Anand Shobhnath Mishra

...Respondent

Mr. Vivek B. Rane i/b. Mr. Kuldeep Jain, *Advocate for Petitioners.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 06, 2025

PC :

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) to refer the disputes and differences between the parties for arbitration in terms of the Partnership Deed, which contains an arbitration agreement and reads thus:-

“23. ARBITRATION : - It is agreed by and between the partners that all disputes which may arise between the partners during the continuance or after the termination of the partnership and whether in relation to the incorporation of the relation to any other matter whatsoever touching the partnership affairs shall be referred to the Arbitrator, to be appointed by each partner to the dispute subject to the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof for the time being in force and the award or awards of such arbitrators on the Umpire, as the case may be, shall be binding on all the parties to said dispute.”

2. It is seen from the record that invocation of the arbitration for resolution of disputes was made by the two Petitioners, who are Partners in the partnership firm, which runs a hospital at Mira Bhayandar, by a letter dated August 29, 2024. In response, by an Advocate's letter dated September 3, 2024, it is seen that, keeping all contentions open, the Respondents had no quarrel with initiating arbitration under Section 11 of the Act and in fact have suggested the name of a certain retired High Court Judge as an Arbitrator. The only difference between the parties on the identity of the arbitrator is that the Petitioners would like a retired district judge to be an Arbitrator.

3. In these circumstances, since there is evidently an arbitration agreement, and consent is also endorsed in the correspondence between the parties. What is writ large is that apart from the identity of the Arbitrator, there is no other difference between the parties in the matter of referring the disputes for resolution before an arbitral tribunal.

4. Consequently, I see no useful purpose being served by resorting to pleadings being filed in this matter since it is limited to appointing a neutral Arbitrator, the reference to whom, the parties are *ad idem* on. Consequently, without expressing any opinion on any facet of the merits of the matter, it is appropriate to refer all disputes and differences that may exist between the parties under the said

Partnership Deed dated December 17, 2018, the following order is passed:-

a] Justice Anuja Prabhudessai, former judge of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

b] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant 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 Arbitration Act to the Advocates for the Applicant 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 Application and a copy of the same shall be furnished by the Advocates for the Applicant 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; and

f] The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode.

5. This Application is accordingly finally disposed of in the aforesaid terms.

6. 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.]