
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.21 OF 2024

Four Seasons Holdings

Through its Partner

Keru Ananda Nanekar & Ors.

...Petitioners

Versus

Surekha Dilip Narhe

...Respondent

Mr Rahul Totala a/w *Mr Mitesh Jain i/b Swapnil Lohiya for Respondent, Advocates for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 8, 2025

PC :

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 arising out of Partnership Deed dated February 24, 2012 (*"Agreement"*). The arbitration agreement is contained in Clause 17 (find at Page No.24 of the Petition). In the interest of brevity, the same is not reproduced here. Suffice it to say that the matter falls within the jurisdiction of this Court.

2. Learned Counsel for the Respondent fairly states that his client would be willing to proceed to arbitration with a caveat that according

to the Respondent, the disputes and differences stand fully and finally settled in terms on which they were divorced. Towards this end, he points to the letter dated October 17, 2023 issued by Advocates for the Respondent asserting that the divorce decree had put to an end all the disputes and differences covered by the arbitration agreement as well.

3. 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 *Interplay Judgement*¹ followed by multiple others, including *SBI General*² and *Pate*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.

4. 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 December 10, 2014 to arbitration by a Sole Arbitrator.

¹ *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

² *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

³ *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

5. In these circumstances, since the limited scope of review of this Court is to examine the existence of an arbitration agreement, it would be appropriate to request the arbitral tribunal to treat the arbitability of dispute in terms of its powers under Section 16 of the Act upfront as a preliminary issue.

6. Since both the parties reside at Pune and the divorce decree was also granted in Pune, the Petitioner's request that the arbitration should be directed to be conducted in Mumbai is untenable. In any case, the parties being from Pune, it would only be appropriate that the arbitration proceedings are conducted in Pune.

7. In these circumstances, this Petition is *finally disposed of* by referring all disputes and differences covered by this proceeding to arbitration by the Learned Sole Arbitrator hereby appointed in the following terms:-

A] Smt. R.P. Sondurbaldota (Retd.) 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 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 parties within a period of two weeks from receipt of a copy of this Order;

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 and;

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.

8. 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.

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.]