

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 121 OF 2025

Ashesh Brothers & Ors

..Applicants

Versus

Sur Gems

...Respondent

ARUN
RAMCHANDRA
SANKPAL

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ARUN
RAMCHANDRA
SANKPAL
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Mr. Ryan D'Souza, with Nikhil Verma, Shivam Laturiya and Prachi
Rungta, i/b APS Law Associates, for the Applicants.
Mr. Vikramjit Garewal, with Vikrant Shetty and Kush Shah, i/b
Dhruve Liladhar & Co, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 10th MARCH 2025

P.C.:

1. This Revision Application is directed against an order dated 11th February 2025 passed by the learned Judge, City Civil Court, Bombay, whereby a Notice of Motion taken out by the defendant nos. 1 to 8 for rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure 1908 ("the Code") in view of the purported bar under Section 5 of the Arbitration and Conciliation Act 1996 ("the Arbitration Act"), came to be rejected.

2. Mr. D'Souza, the learned Counsel for the petitioner, submitted that the petitioner and the respondent are the members of Bharat Diamond Bourse ("BDB") and in accordance with the BDB Arbitration,

Disciplinary and Grievance Redressal Rules, all the disputes between the members of BDB are required to be resolved by arbitration. The respondent-plaintiff had, in fact, invoking arbitration on 2nd August 2024 under Section 21 of the Arbitration Act. Attention of the Court was invited to the communication dated 2nd August 2024 (page 242) addressed on behalf of the plaintiff soliciting the assistance of the BDB to take steps in the recovery of the amount by way of alternate redressal/alternate dispute resolution to enforce the legitimate rights of the plaintiff.

3. The learned Judge, City Civil Court was of the view that in accordance with the very rules of BDB, in the absence of an arbitration agreement between the parties, the dispute cannot be referred to arbitration. Since there was no agreement between the parties, the communication dated 2nd August 2024 cannot be considered to be invocation of the arbitration under Section 21 of the Arbitration Act.

4. Mr. D'Souza fairly submitted that there is no arbitration clause in the contractual documents between the parties. However, the rules by themselves constitute an arbitration agreement.

5. I am afraid to accede to this submission. One of the specified conditions under Rule 11 (i) to refer the dispute to arbitration by the committee of BDB is an agreement to accept arbitration award as per the said rules. Secondly, as pointed out by Mr. Vikramjit Garewal, the

learned Counsel for the respondent, the said rules also provide for resolution of the trade complaints and, in fact, by a communication dated 24th January 2025 BDB had informed the plaintiff that it had considered the said communication of the plaintiff as a trade complaint.

6. Since, *prima facie* there was no arbitration agreement between the parties, the learned Judge, City Civil Court was justified in dismissing the Notice of Motion for rejection of the Plaint on the ground that the suit was barred by the provisions of the Arbitration Act.

7. The Petition, thus, stands dismissed.

8. No costs.

[N. J. JAMADAR, J.]