

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 40 OF 2025

Digitally
signed by
SHRADDHA
KAMLESH
TALEKAR
Date:
2025.03.26
15:00:21
+0530

Abhay Construction Through its Partner Angad A ...Petitioner
Kadam

Versus

Rajendra Shankarrao Kutte ...Respondent

Mr. R.K. Gaikwad, for Petitioner.

Mr. Devashish Jagirdar i/b Anand Nirmal Associates, for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 4, 2025

PC :

1. This is a Petition 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 December 2, 2020. The arbitration agreement is contained in Clause 30 (found at Page 42 of the Petition). 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 November 7, 2024. No reply filed by the Respondent.

3. Today, Learned Counsel for the Respondent submits that he has objections on the ground that the partner, who has filed this application, was not the partner when the agreement was signed. Consequently, according to him, the person signing the Application does not have an authority to sign the Application. I am afraid this objection cannot detain my attention at all. A partnership firm has a capacity to sue and to be sued in its own name. The agreement is with the partnership firm. The invocation is by the partnership firm. Be that as it may, this is not something that the Arbitral Tribunal cannot deal with.

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 *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.

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 December 2, 2020 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*

6. In these circumstances, no useful purpose would be served keeping this Petition pending any further on the docket of this Court. Leaving all contentions on merits including limitation open to the arbitral tribunal, ***finally disposed of*** in the following terms :

A] Mr. Dormaan Dalal, an Advocate of this Court [dormaandalal@gmail.com], 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 the date on which this order is uploaded on the website of this Court. 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 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;

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.]