
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 56 OF 2024

Ramesh Ghanshamdas Kukreja ...Applicant

Versus

Hiralal Ghanshamdas Kukreja & Ors ...Respondents

Mr. Naushad Engineer, Senior Counsel, a/w Yohaana Lunathwalla, i/b J. Samuel, Mahesh Thakker, for the Applicant.

Mr. Yesha Thaker, i/b L.J. Law for Respondent No.1.

Mr. U.P. Bobale, i/b J.H. Ramugade, P G Chandeliya, for Respondent No.2.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 4, 2025

PC :

1. This Application 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 December 18, 2015. The arbitration agreement is contained in Clause 13 (found at Page 44 of the Application). 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 the Applicant on May 8, 2023. There is no reply filed to the said invocation.

3. Objections to referring the parties to arbitration are raised by Respondent Nos.2 and 3. Learned Counsel for Respondent No.1 has no dispute with proceeding to arbitration.

4. Learned Counsel for the Respondent No.2 essentially would submit that the dispute in question is not arbitrable to begin with. According to him, the premise that the property in question has in fact been given on leave and license, and the Applicant has been receiving his share of the income from such letting out of the premises. He would also submit that the Applicant's demand is to cash out his entitlement to the jointly held property, whereas the family settlement, which contains the arbitration agreement, is explicit in its terms that unanimous consent would be required for any disposal of the property.

5. Learned Counsel for Respondent No.3 adopts the submissions made by Respondent No.2 and reiterates the same. The upshot of the submissions of both these Respondents is that the dispute is not arbitrable, and therefore, this Court must not make a reference.

6. Towards this end, Learned Counsel for Respondent No.2 would seek to rely on *Arif Azim*¹ which has quoted with approval, extracts from *NTPC*² and *Vidya Drolia*³.

7. The law on the jurisdiction of the Section 11 Court has travelled much beyond the propositions canvassed by the Respondents. In fact, the fact that *Vidya Drolia* had been rendered on the premise that Section 11(6A) of the Act had been deleted, is well acknowledged in the Constitutional Bench decision in the *Interplay Judgement*⁴.

8. It is now very clear that the Section 11 Court must confine its jurisdiction to the examination of the existence of an arbitration agreement. However tempting it may seem to a Court to enter upon controversies presented by the parties who have a desire not to be referred to arbitration, with the law being emphatically declared by the Supreme Court, such temptation must necessarily be resisted.

9. 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

1 *Arif Azim Co. Ltd. vs. Aptech Ltd.* 2024 INSC 155

2 *NTPC Ltd. v. SPML Infra Ltd.* (2023) 9 SCC 385

3 *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549

4 *In Re: Interplay Between Arbitration Agreement under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899* (2024) 6 SCC 1

the decisions of a seven-judge bench in the *Interplay Judgement* followed by multiple others, including *SBI General*⁵ and *Patel*⁶ 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.

10. 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 to arbitration by a Sole Arbitrator.

11. Since *Arif Azim* has been rendered subsequent in time, some confusion arose as to whether it seeks to distinguish the ruling in *Interplay Judgement*. However, this doubt too has been put to rest by the Supreme Court in a detailed articulation of the march of the law governing Section 11 of the Act in *Patel*. As regards the extract from *NBCC* cited and commended by Learned Counsel for Respondent No.2, that again deals with the “eye of the needle” theory, which stands

5 *SBI General Insurance Co. Ltd. Vs. Krish Spinning*, 2024 SCC OnLine 1974

6 *Ajay Madhusudan Patel Vs. Jyotindra S. Patel*, 2024 SCC OnLine, 2597

overtaken by the law declared in the *Interplay Judgement*, and re-articulated in Patel.

12. In these circumstances, taking note of the fact that the core objections from the Respondents falls in the realm of arbitrability of disputes, it would not be possible for this Court to take cognizance of these objections. Such objections fall within the domain of the Learned Arbitral Tribunal.

13. Needless to say, the question of arbitrability squarely falls under the domain of the arbitral tribunal and these Respondents would be at liberty to take out such Applications as advised under Section 16 of the Act. It would be for the arbitral tribunal to examine the facts and answer the mixed question of fact and law as to the arbitrability of the dispute.

14. Consequently, this Application is *finally disposed of* referring the parties to arbitration in the following terms:-

A) Mr. Yashodhan Divekar, a learned advocate 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;

Office Address:-

1st floor, Rajabahadoor Mansion, 14,
Ambalal Doshi Marg,
Fort, Mumbai - 400 023

Email ID: yashodhandivekar@yahoo.in

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 of upload of this order. 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.

15. 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.

16. 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.]