

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.156 OF 2024
WITH
INTERIM APPLICATION (L) NO.18793 OF 2023
IN
ARBITRATION APPLICATION NO.156 OF 2024
WITH
INTERIM APPLICATION (L) NO.18793 OF 2023
IN
ARBITRATION APPLICATION NO.156 OF 2024
AND
ARBITRATION PETITION NO.15 OF 2025
WITH
INTERIM APPLICATION (L) NO.4958 OF 2023
IN
ARBITRATION PETITION NO.15 OF 2025

Yasmin Mohmmmed Ahmed	...Applicant
Versus	
Fiona Realty Private Limited	...Respondent

Ms Tahira Siddique a/w. Shweta R. Rathod i/b. Elixir Legal Services, Advocates for Applicant.

Respondent was represented, but appearance has not been given.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 6, 2025

PC :

1. Arbitration Application No.156 of 2024 is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) while Arbitration Petition No.15 of 2025 is under Section 9 of the Act, both of which are filed by the same Petitioner/Applicant and relate to the same disputes and differences between the parties.

2. Having heard the matter at some length, it is evident that the arbitration agreement that has been invoked is a clause contained in the Partnership Deed in which there are many partners. The Petitioner/Applicant is a legal heir of one of the deceased partners.

3. Learned Counsel for the Petitioner submits that she would bring all the legal heirs as parties in the arbitration proceedings, invoking the principles of law governing joinder of parties who are not signatories to the arbitration agreement. She submits that if the arbitrator is appointed under Section 11 of the Act, leaving the Section 9 Petition to be dealt with appropriately by the arbitral tribunal appointed hereby, she would agitate all issues before the arbitral tribunal.

4. Learned Senior Counsel on behalf of the Respondent submits that the Petitioner/Applicant claims as the legal heir of one of the partners. He would submit that if arbitration were to be commenced at the behest of the Petitioner/Applicant, who was herself not a signatory to the partnership deed but is claiming as a widow of a deceased partner, it would only be appropriate that all the legal heirs, including another wife of the deceased partner, too are brought into the proceedings.

5. Having perused the record bearing in mind the scope of review permissible to this Court, *prima facie*, it is evident that the disputes and differences relate to the affairs of the firm. It would only be appropriate and just that all disputes and differences be left for agitation before the Arbitral Tribunal, including questions on jurisdiction, which the Arbitral Tribunal is entitled to adjudicate under Section 16 of the Act.

6. In these circumstances, without prejudice to all rights and contentions of the parties, both the aforesaid proceedings are ***finally disposed of*** in the following terms:-

A] Justice (Retd.) Akil Kureshi, a former Chief Justice of the Rajasthan and Tripura High Courts and a 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 Petitioner within a period of one week from today. The Petition 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. Given the efflux of time, should any modifications in Section 9 Petition be required, the Petitioner shall be at liberty to do so.

9. The Learned Arbitral Tribunal is requested to examine if it would be possible to amicably resolve the disputes among the parties without having to expend energy and resources on the arbitration, before proceeding to conduct the arbitration proceedings.

10. Needless to say, all interim applications connected with the aforesaid proceedings also stand disposed of.

11. 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.]