
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 49 OF 2025

SHRADDHA
KAMLESH
TALEKAR
Digitally
signed by
SHRADDHA
KAMLESH
TALEKAR
Date:
2025.05.05
20:46:23
+0530

Sagar Shridatta Shirodkar

...Applicant

Versus

Prabhakar Tikendra Paul

...Respondent

Mr. Anil Dsouza a/w Mark Dbritto, Elaine Fargoes i/b Ernest Tuscano,
for Applicant.

Mr. Vivek Sharma i/b. Adv. Dinesh Yadav, for Respondent

Respondent -Prabhakar Paul present in Court.

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : April 9, 2025

P. C.

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking to refer the disputes and differences between the parties under Deed of Partnership, dated July 27, 2006 (***“Agreement”***). The arbitration agreement is contained in Clause 20 (found at Page 28 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 Applicant on October 11, 2024. By a reply dated October 28, 2024, there is a blanket denial of the existence of the arbitration agreement by the Respondent, primarily on the premise that the Agreement is a forged agreement and also that the Applicant has admitted to the forgery. On the face of the record, there is no basis for such an assertion. The Applicant stoutly denies having admitted to forging the document. He would submit that such a stance is inexplicable and undermines the credibility of the Respondent.

3. Be that as it may, without meaning to shut out the ability of the Respondent to demonstrate that the Agreement is a forged instrument before the Arbitral Tribunal, and considering that answering that question would involve examining evidence based on the premise on which such a claim is made, all of which falls in the domain of the Arbitral Tribunal under Section 16 of the Act, it would be appropriate to refer the parties to arbitration.

4. In my opinion, the submission of the Learned Counsel for the Respondent amounts to the proposition that the moment forgery is alleged, it is a very serious issue, and therefore, is covered by the exception to coverage by arbitration. Learned Counsel for the Respondent places strong emphasis

and reliance upon Paragraph 25 of *A. Ayyasamy vs A. Paramasivam & Ors* [(2016) 10 SCC 386] (*Ayyasamy*). The very first sentence of the said paragraph states that *mere allegation of fraud simpliciter will not be a ground to nullify the effect of the arbitration agreement between the parties*. Allegations of fraud are indeed serious allegations, and should not be lightly made and accepted. It is the reply to the invocation notice in which the Respondent asserts that the Applicant has admitted to the forgery but it provides no basis whatsoever for such an assertion. That, in my opinion, cannot present a circumstantial framework as to shut out the arbitration, when exercising jurisdiction under Section 11 of the Act.

5. The other judgment sought to be relied upon is *Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority* [1988 (2) SCC 338)]. Learned Counsel for the Respondent also relied upon a judgment in *Rashid Raza Vs. Sadaf Akhtar* 2019 (8) SCC 710. These judgements are further iterations of *Ayyasamy*, referred to above. Having heard the parties, in my opinion the approach adopted by me in relation to *Ayyasamy* above would be adequate to deal with these judgements too. No useful purpose would be served expending more judicial time articulating and dealing with multiple judgements on the same point, and that too when presented with a simple *ipse dixit* assertion that the Applicant has admitted to forgery.

6. Needless to say, as stated above, it is open to the Respondent to make submissions in this regard before the Arbitral Tribunal, including by taking out an application under Section 16 of the Act in order to attempt to convince the Arbitral Tribunal with better evidence that the arbitration agreement does not exist and that the jurisdiction is not created.

7. In these circumstances, this Application is hereby *finally disposed of*, in terms of the following order:

A] Mr. Dushyant Punekar, a learned advocate of this Court (Email Id :dushyant@purekar.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.

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.]