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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 17 OF 2024

Sai Milk, Phaltan,
Through Proprietor
Versus
Kolhapur District Sahakari Dudh
Utpadak Sangh Ltd., Kolhapur

... Petitioner

... Respondent

Mr. Gajanan Savagave, Advocate for the Petitioner.
Mr. Bhooshan R. Mandlik, Advocate for Respondent.

CORAM : M.M. SATHAYE, J.

DATE : 12th MARCH, 2026

P.C. :

1. Heard learned counsel for the parties. This is an application / petition for appointment of arbitrator under section 11 of the Arbitration and Conciliation Act, 1996 ('the said Act' for short).
2. The Petitioner claims to be a distributor of milk on behalf of the Respondent Dudh-Sangh. The agreement in question, relied upon by the Petitioner is dated to 05.04.2021 and the period of that agreement is from 01.04.2021 to 31.03.2022.
3. Learned counsel for the Petitioner invited the Court's attention to clause 10 of the said agreement which contemplates that if any dispute arises out of said agreement, the same shall be referred to an arbitrator i.e. Chairman of Dudh-Sangh. Clause 11 of the agreement contemplates that if dispute arises out of the said

agreement, the Court at Kolhapur will have jurisdiction.

4. The Petitioner sent his advocate's invocation notice dated 11.08.2023 invoking the arbitration clause and suggesting the name of a retired District Judge as an Arbitrator. The Respondent replied to the said invocation-notice by its reply dated 19.08.2023 and denied appointment of arbitrator including the name suggested.

5. Learned counsel for the Respondent, at the outset, submitted that the said agreement is not signed on behalf of Respondent Dudh-Sangh. The learned counsel for the Petitioner, in response, submitted that the agreement is signed by two representatives of the Respondent Dudh-Sangh. Learned counsel for the Respondent submits that such case is not made out in the pleadings of the arbitration-petition or in the invocation-notice and as such the Respondent is not obliged to answer the same. Be that as it may.

6. I have perused the invocation notice and the reply and affidavit in reply filed by Respondent to this petition. Though it is the case of the Respondent Dudh-Sangh that the said agreement is not signed by it, in the notice-reply dated 19.08.2023, a stand is taken that there was an agreement in existence between parties till 31.03.2020 and for the sake of convenience, the Respondent Dudh-Sangh supplied milk to the Petitioner till 14.02.2023; however, there is no agreement executed. In the affidavit-in-reply dated 13.01.2025 also, a stand is taken that last agreement was executed between parties on 20.04.2019 for the period till 31.03.2020; however, the agreement has expired by efflux of time.

7. In paragraph 12 of the invocation-notice issued by the Petitioner and in paragraph 8 of the petition, the Petitioner has contended that, even after expiry of said agreement, bank guarantee of Rs. 45 Lakh is executed by Petitioner in favour of Respondent.

8. In response, the Respondent in paragraph No. 12 of notice-reply and paragraph 10 of the affidavit-in-reply, a stand is taken that the bank guarantee of Rs. 45 lakhs to Respondent given by Petitioner to the Respondent is of no use and irrelevant. Also a clear stand is taken that the contract between the parties was 'commercial transaction'.

9. In paragraph 12 of the affidavit-in-reply, the stand is reiterated that the Respondent was supplying milk to the Petitioner even after 31.03.2020 only for the convenience of the consumers but without any contractual rights and contractual obligation. It is further stated that by a letter dated 11.02.2022, the Petitioner was informed that supply of milk will be stopped from 14.02.2023.

10. Respondent is a Society of Milk producers. From the aforesaid stand taken by the Respondent, it is clear that the milk was being supplied even after the efflux of time, assuming the last agreement which was till 31.03.2020. It is also clear that the milk was supplied for convenience of the consumers and it stopped from 14.02.2023 which was almost for a period of 2 years and 11 months after the period of admitted agreement was over. No other agreement is brought on record which can be said to have governed the parties for supply of milk after 01.04.2020 till 14.02.2023 during which the

supply of milk is admitted. In that view of the matter, it cannot be accepted under law, at least at the stage of Section 11 of the said Act, that a registered Society operated and supplied milk with no contract at all between the parties for such a long time. It can not be ignored that there appears signatures at the bottom of said agreement dated 05.04.2021, purportedly of Mr. Mahesh Prabhakar Smart and Mr. Pandurang Maruti Gaikwad as sangh-pratinidhi (society-representatives). No stand is shown to have been taken about these signatures in the affidavit in reply.

11. In that view of the matter, appointment of arbitrator is necessary, however, by keeping the aspect of arbitrability open to be decided by the arbitrator, considering the peculiar stand taken by the Respondent.

12. Hence, Retired Justice Shri. Sunil K. Kotwal, Plot No.21, 'A' Ward, Shantiban Colony, Near Deshmukh High School, Saneguruji Vasahat, Radhanagri Road, Kolhapur – 416 012, is appointed as a sole arbitrator to arbitrate the dispute between the parties. Parties are directed to appear before the said Arbitrator on 06.04.2026. The said arbitrator shall be at liberty to fix further schedule of hearing and also his arbitration fees in accordance with law.

13. Arbitration petition is disposed of in above terms.

14. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)