

(2024) 01 BOM CK 0045
In the Bombay High Court
Case No : Arbitration Petition No. 114 Of 2022

Rachana Kamlesh Shahani

APPELLANT

Vs

Sunshine Financial Services And Others

RESPONDENT

Date of Decision : 11-01-2024

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 7(4)(c), 11

Citation : (2024) 01 BOM CK 0045

Hon'ble Judges : Dr. Neela Gokhale, J

Bench : Single Bench

Advocate : Sarthak Utangale, Vedant Joshi, Satyaprakash Sharma

Final Decision : Dismissed

Judgement

Dr. Neela Gokhale, J

1. This petition seeks appointment of an arbitrator under Section 11 of the Arbitration & Conciliation Act, 1996 ("Act") to adjudicate disputes arising between the parties out of the partnership deed dated 23rd October 1992.

2. The Petitioner claims to be one of the partners of the Respondent No.1- Partnership firm while she says that Respondents No.2 to 7 are partners of the said firm. The business of the partnership firm is to manage portfolios, equity participation share, stock trading and other related financial dealings and other allied business that may be decided by the partners from time to time.

3. Mr. Sarthak Utangale, learned counsel appearing for the Petitioner, draws to my attention clause 12 of the agreement. It reads as thus:

"12) Arbitration: If during the continuance of the said partnership or at any time afterwards any difference shall arise between the said partners or their executors or of the administrators in regard to the construction of any division, act or thing to be made or done in pursuance thereof or to any matter or thing related to the said partnership or the affairs thereof, such difference shall be deemed to

partners. Majority decision will be final & binding.”

4. It is on the basis of this clause that the Petitioner issued notice dated 6th September 2018 to the firm and rest of the partners informing them of having appointed Justice J.N.Patel (Retd. Chief Justice of Kolkata High Court) as a sole arbitrator to adjudicate the disputes between the parties. By the said notice, the Respondents were also called upon to concur upon the appointment of the nominated arbitrator. Replies dated 24th September 2018 and 29th September 2018 respectively were issued by the Respondents No.3 and 6 denying the very existence of the partnership deed. Both the partners also denied the claim of the Petitioner as well as the arbitration clause in the agreement. Thus, the Petitioner filed the present Arbitration Petition.

5. Upon private service by the Petitioner, the Respondents have appeared and a reply has been filed on behalf of the Respondents No.2,3,4 and 6 denying the contents of the application.

6. Mr. Utangale tried to pursue the Court that since all the Respondents in their notice-replies had not denied the reference to arbitration, consent to arbitration has to be presumed. He relies upon a decision of the Karnataka High Court dated 1st August 2022 in the matter of S.R. Ravi v. Karnataka State Tourism Development Corporation Civil Miscellaneous Petition No.180 of 2020.. He drew my attention to paragraph 13 of the judgment, which reads as thus:

"13. In S.N. Prasad's case supra, the Apex Court held as under:

"11. What therefore remains to be considered is whether there is an arbitration agreement as contemplated under Section 7(4)(c) of the Act, which provides that an arbitration agreement in writing can be said to exist, if it is contained in an exchange of statements of claim and defence in which the existence of the arbitration agreement is alleged by one party and not denied by the other. The statement of claim filed by the first respondent before the arbitrator does not contain an allegation or assertion of an arbitration agreement between the first respondent and the appellant. Nor has the appellant accepted the existence of any arbitration agreement by not denying such arbitration agreement in the defence filed before the arbitrator. On the other hand, the appellant specifically contended before the arbitrator that there was no arbitration agreement between them (the first respondent and the appellant) and therefore the arbitrator did not have jurisdiction.

12. But the words, "statements of claim and defence" occurring in Section 7(4)(c) of the Act, are not restricted to the statements of claim and defence filed before the arbitrator. If there is an assertion of existence of an arbitration agreement in any suit, petition or application filed before any court, and if there is no denial thereof in the defence/counter/written statement thereto filed by the other party to such suit, petition or application, then it can be said that there is an "exchange of statements of claim and defence" for the purposes of Section 7(4)(c) of the Act. It follows that if in the application filed under Section 11 of

the Act, the applicant asserts the existence of an arbitration agreement with each of the respondents and if the respondents do not deny the said assertion, in their statement of defence, the court can proceed on the basis that there is an arbitration agreement in writing between the parties."

7. Relying upon this judgment as well as that cited in the judgment, Mr. Utangale says that since the Respondents have not denied his assertions of an arbitration agreement, it is presumed to exist even though the clause in the partnership agreement is not happily worded.

8. I have gone through the agreement and the documents on record. The clause being referred to as an 'Arbitration Clause' does not in any way indicate any agreement to refer any dispute to arbitration. Neither does it indicate any intention of the parties to refer to the arbitration. Moreover, the notice-replies not only deny the existence of the arbitration clause but even deny the partnership agreement itself. A simple request of the 3rd Respondent-Geeta for a copy of the document relied upon by the Petitioner cannot in itself be interpreted by the Petitioner to mean her consent for arbitration. The affidavits-in-reply also deny the contents of the petition. Thus, the decision relied upon by the Petitioner is wholly inapplicable to the facts of the present case. There is no arbitration clause in the agreement. Neither can an arbitration agreement be implied from any correspondence between the parties.

9. In this view of the matter, the present Petition is not maintainable and is dismissed.

10. There will be no order as to costs.