
(2012) 10 RAJ CK 0056

In the Rajasthan High Court

Case No : Arbitration Application No. 67 of 2011

Saroj Joshi (Ms.)

APPELLANT

Vs

Mrs. Kulsum Malik and Another

RESPONDENT

Date of Decision : 06-10-2012

Acts Referred:

Citation : (2013) 1 WLN 26

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Advocate : Prakul Khurana and Mr. L.L. Gupta, for the Non-Applicant No. 1, for the Appellant;

Final Decision : Allowed

Judgement

Prem Shanker Asopa, J.—This is an arbitration application arising out of the partnership deed dt. 14.01.2009 (Anx. 1) executed between the parties, containing arbitration Clause 24. Briefly stated, the facts of the case, are that the partnership deed dt. 14.01.2009 (Anx. 1) was executed between the Applicant and the Non-applicant No. 1 to carry on the business in the name and style of M/s. KAYAKALP HERBALS BEAUTY CLINIC & INSTITUTE. The Non-applicant No. 1 with the mala fide intention to siphon off profits of the partnership firm and the money contributed by the Applicant i.e. Rs. 5 lacs by way of contribution to the partnership business and Rs. 21 lacs by way of loan, has ousted the Applicant from the partnership firm. The Non-applicant No. 1 has denied participation of the Applicant in the business of the partnership firm and is carrying on the business of the partnership firm unilaterally assuming herself as the sole proprietor of the business. Therefore, disputes and differences have arisen between the Applicant and the Non-applicant No. 1.

2. The Applicant gave a legal notice dt. 11.05.2011 to resolve the aforesaid dispute. Then again, legal notice dt. 02.06.2011 (Anx. 6) was given for invoking the arbitration clause 24 contained in the partnership deed by sending a notice to the Non-applicant No. 1 seeking her consent for the appointment of the Sole

Arbitrator Mr. P.K. Kasliwal, Advocate, 404, Pink Tower, Opposite Nehru Garden, Tonk Road, Jaipur to resolve the dispute through arbitration. The same was disapproved by the Non-applicant No. 1 and she suggested the name of Mr. Nahar Singh Maheshwari, Advocate.

3. Submission of counsel for the Applicant is that despite the legal notice for invoking the arbitration clause, dt. 02.06.2011 and the reminder dt. 11.07.2011 (Anx. 9), the Arbitrator has not been appointed, therefore, she has a right to seek appointment of the Arbitrator.

4. Counsel for the Non-applicant submits that the Court may pass appropriate order.

5. I have gone through record of the arbitration application and further considered the aforesaid submissions of the counsel for the parties.

6. In my view, since no Arbitrator has been agreed between the parties, I deem it proper to appoint the Sole Arbitrator. Therefore, the arbitration application is allowed and Mr. Justice Bhanwaroo Khan, former Judge of this Court as the Sole Arbitrator, and the matter is referred to him for resolving the disputes between the parties, arising out of the agreement dt. partnership deed dt. 14.01.2009 (Anx. 1). The Sole Arbitrator will fix his fee according to the Arbitration Manual. All objections would be open to be raised by the respondent before the Sole Arbitrator. A copy of this order be sent to Mr. Justice Bhanwaroo Khan, former Judge of this Court residing at I/21, Gandhi Nagar, Jaipur 302 015.