

(2011) 03 BOM CK 0014

In the Bombay High Court

Case No : Arbitration Application No. 86 of 2010

Smt. Alka Chandewar

APPELLANT

Vs

Sovind Nathuji Chandewar

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2011) 03 BOM CK 0014

Hon'ble Judges : S.J. Vazifdar, J

Bench : Single Bench

Advocate : Vivek R. Walawalkar, instructed by Sameer R. Bhalekar, for the Appellant; None, for the Respondent

Judgement

S.J. Vazifdar, J.—This is an application u/s 11 of the Arbitration & Conciliation Act, 1996.

2. The parties are husband and wife. They carried on business in the firm, name and style of M/s. Saraswati Developers on the terms and conditions contained in a deed of partnership dated 7th September, 1994. Clause 20 thereof reads as under:

20. In the event of any dispute or differences that may arise at to the constructions or interpretation of any of the terms of this Deed, the same shall be referred to the Arbitration under the provisions of the Indian Arbitration Act, 1940. Each of the parties shall appoint the arbitrator of their choice who in turn shall appoint an umpire. The umpire shall enter upon the reference and pronounce and award upon the arbitration. Once the award is pronounced the same is conclusive and binding upon the parties hereto.

3. Disputes and differences have arisen between the parties. There are other proceedings also between them. The applicant, by her advocate's letter dated 7th March, 2008, inter-alia, set out some of the disputes, invoked the arbitration agreement, suggested the name of an arbitrator and called upon the Respondent

to concur in the appointment. The Respondent has failed to nominate an arbitrator though a reasonable time has elapsed. The Respondent has, therefore, forfeited his right to appoint an arbitrator. It is necessary for the Court, therefore, to appoint an arbitrator on his behalf.

4. Mr. Walawalkar, the learned Counsel appearing on behalf of the applicant states that with a view to save costs and for convenience, the applicant is agreeable to the arbitrator to be appointed by me on behalf of the Respondent acting as a sole arbitrator. The Respondent can have no objection to the same.

5. Although each party has a right to appoint an arbitrator, it is always open to a party to concur in the appointment of an arbitrator nominated by the other as the sole arbitrator. The party appointing the arbitrator cannot possibly have any objection to the same. The situation is no different where the Chief Justice or his designate appoints an arbitrator on behalf of the Respondent in an application u/s 11. The appointment not having been made by the Respondent, the Chief Justice or his designate and no one else appoints an arbitrator on his behalf. There can, like-wise, be no objection by the Respondent to the applicant/Petitioner forfeiting his right to appoint another arbitrator and instead concurring in the appointment of the arbitrator appointed u/s 11 acting as the sole arbitrator.

5. In the circumstances, the Arbitration Application is disposed of by appointing Mr. Justice M.S. Rane (a former Judge of this Court) as the sole arbitrator.

6. No order as to costs.