

Defective Invocation Notice Lead to Dismissal of Arbitration Application: Bombay High Court

Shailesh Ranka and others

...Applicants

versus

Windsor Machines Limited and another

...Respondent

Case Number: Commercial Arbitration Application No. 38198 of
2022

Date of Judgement: 19.12.2023

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Facts:

- Applicants (Ranka family) and Respondent 2 (KrishnaArya Tech Corp LLP) formed partnership R-Cube Energy
- R-Cube Energy entered investment agreement with Respondent 1 (Windsor Machines)
- Disputes arose between parties regarding non-fulfilment of obligations under the agreement
- Investment agreement contained two-tier dispute resolution mechanism – first amicable settlement, then arbitration
- Applicants appointed neutral person under clause 24.2.3 and asked Respondent 1 to do so too
- Notice invoking arbitration issued only on behalf of

Applicants, not on behalf of partnership firm R-Cube Energy

Arguments by Applicants:

- They had activated dispute resolution mechanism by appointing neutral person under clause 24.2.3
- Respondent 1 failed to appoint neutral person, so they invoked arbitration
- Invocation notice was on behalf of entire R-Cube Energy partnership
- Valid arbitration clause exists, so parties should be referred to arbitration

Arguments by Respondent 1:

- Two-tier dispute resolution not properly followed before invoking arbitration
- Invocation notice defective as not issued on behalf of partnership firm R-Cube Energy which had agreement with Respondent 1
- Section 19(2)(a) of Partnership Act bars one partner submitting dispute of partnership firm to arbitration without other partners

Court's Decision:

- Applicants did activate first tier by appointing neutral person, so first objection fails
- However, arbitration invocation notice was defective as not issued on behalf of partnership firm R-Cube Energy
- Section 19(2)(a) Partnership Act applicable, so one partner (Applicants) couldn't invoke arbitration for dispute of partnership firm without other partner (Respondent 2)
- Following precedent, such invocation notice gave no cause of action under Section 11 of Arbitration Act
- Application dismissed

Referred Laws:

- Arbitration and Conciliation Act 1996
- Indian Partnership Act 1932, Section 19(2)(a)