

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 289/2014**

% Judgement pronounced on: 01.12.2014

ATUL BERRY & ANR Petitioners

Through: Mr B.L. Chawla, Advocate

versus

TATA TELESERVICES LTD & ANR Respondents

Through: Mr Azmat Amanullah, Advocate for
Respondent No. 1

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. Learned counsel for the petitioner has submitted that he does not wish to file any rejoinder.

2. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') against two respondents, namely, Tata Teleservices Limited and Vion Network Limited.

3. It is contended by the petitioner that the petitioners are the owners of built up property No.11747/4, Gali No. 5, Khasra No. 3624/688, Block U, Basti Reghar, Sat Nagar, Karol Bagh, New Delhi-110005. A licence agreement dated 31.08.2001 had entered into between the petitioner and

respondent No. 1 for using the terrace of the said premises for the purpose of installing poles/towers mounted antennas, shelters, D.G. space and other related equipment for a period of 240 months commencing from 14.02.2003 at the fee of Rs.12,000/- per month. As per clause 14 of the said agreement, the respondent No.1 was entitled to assign, transfer in whole or a portion of the site, antenna, the equipment, subject to prior consent in writing of the petitioners and in such an event, the transferee or the assignee, as the case may be, shall be bound by all the terms and conditions set out in the said deed. Respondent No.1 assigned and transferred the terrace space to respondent No.2 and since then respondent No.2 has been using the said space and has been paying the agreed monthly fee to the petitioner. It is submitted that respondent No.2 continued to use the said space without obtaining the requisite permission from the concerned department. The petitioners have let out other portions of the said building and upon falling vacant, property dealers of the area were approached, but he could not let out the portion of the vacant property since his property was included in the list of booked properties by the North Delhi Municipal Corporation and was also uploaded on its website for unauthorized use. It was booked under Section 343/344 of DMC Act for erection of cell tower on the roof tower,

which was issued to respondent No.1 vide letter dated 08.12.2004 and a notice dated 19.03.2012 was issued to respondent No.1 asking them for renewal of the permission, but respondent No.1 did not complete the formalities of renewal of licence. As a result, the petitioner has been suffering monetary loss and is not able to let out the property. The petitioner sent a notice dated 22.02.2012 to respondent No.2, but, despite the said notice served upon respondent No.2, the respondent did not complete the requisite formalities and did not get their licences renewed for the use of the terrace space of the said property and also did not vacate the same. Another notice dated 11.04.2014 was sent to the respondents calling upon them to remove their equipment installed at the terrace and handover its vacant possession to the petitioner along with other user charges. It is submitted that the agreement contained an arbitration clause and their dispute was required to be resolved by the sole Arbitrator, to be appointed jointly by both the parties. It is further submitted that the present controversy does not fall in the ambit of arbitration clause, but the petitioners gave their no objection for the same and also for the resolution of their controversy and suggested the name of Shri Anil Uttam, Advocate for the said purpose. No response, however, was received from the respondents. On these facts, the

petitioner has prayed that an Arbitral Tribunal be appointed for adjudication of the dispute and controversy between the parties.

4. The notice was issued to both the respondents and the counsel for respondent No.1, who was present in the Court on 28.05.2014, accepted the notice for respondent No.1. Thereafter, on the next date, i.e., on 23.03.2014, the learned counsel for the petitioner made a submission to drop respondent No.2 from the array of respondents on the ground that he does not claim any relief against him. On his submission, the name of respondent No.2 was deleted from the array of respondents. The present petition is now, therefore, between petitioner and respondent No.1. The respondent No.1 has filed his reply. The respondent No.1 has not disputed the fact that he had entered into the Licence Deed with the petitioner for use of the terrace of the above said property. The sole contention of the respondent No.1 is that he had now sold this business to respondent No.2 pursuant to the authority given to him under clause 14 of the agreement. The business was sold by him to respondent No.2 in the year 2007 and since then, the respondent No.2 has been using the said property and paying the rent. It is submitted that pursuant to his agreement with respondent No.2, all the business, assets relating to this telecom tower has been transferred to him and, therefore, the

said contract is no more binding upon him and the petition is liable to be dismissed.

5. I have heard the arguments and perused the relevant record.

6. There is no dispute that under Section 11(6) of the Act, the Court is empowered to appoint an Arbitrator in case the parties fail to appoint their Arbitrator as per the arbitration clause. While the contention of the petitioner is that there is an arbitration agreement between him and respondent No.1, respondent No.1 has denied so. As is clear from the facts mentioned above, although initially the petitioner and respondent No.1 had entered into an agreement to use the terrace of the petitioner's property for a particular period, but the clause 14 of the said deed dated 14.02.2003, empowers respondent No.1 to assign his business to a third person with the consent of the petitioner. The said clause 14 is reproduced as under:-

“14. ASSIGNMENT

14.1 It is hereby agreed by both the parties to the deed that this is a transferable deed and that TTL during the period of the deed or its renewals thereof shall be entitled to make an assignment of this deed duration, transfer in whole or a portion of the Site, antennae, the Equipment subject to prior consent in writing of GRANTOR to such assignment, transfer or sub-grant. Such consent shall not be unreasonably refused or withheld by GRANTOR and in such an event, the transferee or the assignee, as the case may be, shall be bound by

all the conditions set out in the deed. In the event TTL makes available the scheduled premises or its desirous of making available the scheduled premises for use, to its subsidiaries, holding companies, joint venture partners or partners, any time during the term of this deed, then TTL shall not require any written consent of the GRANTOR as mentioned above and the same shall not be construed as a sub-licensing or parting with the possession of the scheduled premises in full or part, as the case may be.

14.2 Any agencies such as Financial Institution or Banks or its agents can step into the shoes of TTL on transferring of TTL's Basic Telephone Service License to such agencies and such Agencies shall be treated as Licensee for the rest of the period of this deed. The grantor shall not object or refuse such agency to operate for the rest of the period of this leave and license.

14.3 Notwithstanding anything contained in the other provisions of this deed, TTL shall be entitled to share in whole or in part, with any entity/company of its own choice, the scheduled premises secured by it, under this deed at its sole discretion and terms and conditions settled by TTL, and such sharing shall in no way be treated by GRANTOR as an unauthorized use of the premises or sub-licensing or parting with the possession of the scheduled premises in full or in part, as the case may be."

7. Under this clause 14 which empowers respondent No.1 to assign his business to a third party with the consent of the petitioner, he had assigned the said business in favour of respondent No.2 vide Assignment Document

dated 08.11.2007. It is also an admitted fact that since 2007, respondent No.2 has been using the terrace and also paying the rent. It, therefore, is clear that respondent No.1 is neither in possession nor in use of the terrace. There exists no arbitral dispute between him and the petitioner. In view of this, nothing can be assigned to Arbitrator.

The petition is, therefore, dismissed.

(DEEPA SHARMA)
JUDGE

DECEMBER 01, 2014
BG