

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Arb P No.02/2024

**Reserved on :29.11.2024.
Pronounced on: 30.12.2024.**

Shameema Akhter, Age about 64 years, D/o Ghulam
Mohiudin Bhat W/o Late Noor Mohammad Sheikh
R/o Solina Payeen, Behind Modern High School,
Solina, Srinagar-190009. **...Petitioner(s).**

Through: Mr. Abid Malla, Advocate.

Vs.

1. Arif Hameed Bhat S/o Abdul Hameed Bhat R/o
Solina Payeen Srinagar C/o 24x7 Fitness Gym,
Solina Payeen Bhind Modern High School,
Srinagar.
2. Ajaz Ahmad Matoo S/o Late Habibullah Mattoo
R/o Khanyar Srinagar, C/o 24x7 Fitness Gym,
Solina Payeen Behind Modern High School,
Srinagar. **....Respondent(s)**

Through: Mr. Owais Shafi, Advocate.

**CORAM:
HON'BLE THE CHIEF JUSTICE**

O R D E R

01. The petitioner-Shameema Akhter has applied under Section 11(5) of the Arbitration and Conciliation Act, 1996, for short the Act, for appointment of an arbitrator in terms of the rent deed dated 20.10.2021 to resolve the dispute inter-se parties as the said deed provides for resolution of disputes through a sole arbitrator to be appointed mutually by the parties.

02. The case put up by the petitioner is that she being owner of a single storey building with slab situate at Solina Payeen, Srinagar, entered into a rent deed with the respondents *inter-alia* on the terms and conditions that

respondents will raise the construction of the second storey on the existing first storey out of their own funds and will run their business in the said second storey upon payment of monthly rent of Rs.21000/-. The rent was agreed to be paid from the date of start of the business by the respondents in the said premises. It is further stated that respondents paid rent to the petitioner from July, 2022 up to January, 2023 in respect of the rented premises and thereafter the same has been stopped by the respondents from February, 2023 for the reason that the petitioner failed to clear the liability with respect to the expenses incurred by the respondents in construction of the rented premises. On failure of the respondents to pay the rent in respect of the rented premises, the petitioner claims to have served a notice upon the respondents in terms of the arbitration clause contained in the rent agreement. It is stated that respondents failed to act in the matter, therefore, the petitioner has been left with no choice but to approach this Court through the medium of instant petition seeking appointment of an arbitrator.

03. On notice of the petition, the respondents appeared and filed their objections. In their objections, the respondents have admitted execution of the rent deed inter-se parties. The key objection raised by the respondents is that they are entitled to be paid the amounts incurred by them in construction of the second storey on the existing single storey building which is not being paid by the petitioner despite ensuring the respondents that she will pay the said amount to the respondents. Therefore, because of non-payment of the expenditure by the petitioner to the respondents, they stopped to pay the rent to the petitioner. It is also stated by the respondents in their objections that certain contents which were agreed to by the parties were omitted in the rent deed without the knowledge of the respondents.

04. Heard learned counsel for the parties and perused the documents on record.

05. Perusal of the rent deed executed between the parties reveals that the same contains an arbitration clause which reads as under:

“16. That in case of any dispute between the parties to this rent deed, same shall be resolved by the parties amicably however if the parties fail to resolve the same, the parties shall refer the

matter to an arbitrator who shall be appointed with the consent of both the parties (landlady and the tenants) and the decision of the arbitrator shall be final and binding upon both the parties.”

06. The aforesaid arbitration clause contained in the rent deed provides that in case of an dispute the same shall be resolved amicably and in case of failure the dispute shall be referred to an arbitrator to be appointed by the parties.

07. Perusal of the pleadings reveal that a dispute has arisen between the parties and execution of rent deed, containing an arbitration clause, is not disputed by the respondents. Further, it is revealed from the pleadings that petitioner has invoked the arbitration clause vide legal notice dated 04.12.2023 requesting for appointment of an arbitrator. However, the respondents have failed to act in the matter and the petitioner has been left with no choice but to approach this Court through the medium of the present petition.

08. In view of the aforesaid facts and circumstances, despite invocation of the arbitration clause, the request of the petitioner has not been acceded to, it is considered to be a fit case where the arbitrator needs to be appointed by this Court. Accordingly, Mr. Faheem Nissar Shah, Advocate, High Court of Jammu and Kashmir & Ladakh, is appointed as the sole arbitrator who shall proceed in the matter in accordance with the provisions of the Act to make an award within the time provided in the Act itself after charging the prescribed fee along with incidental expenses to be shared by the parties.

09. The petition is, accordingly, disposed of and the learned arbitrator be informed accordingly.

(TASHI RABSTAN)
Chief Justice

Srinagar
30.12.2024
Abdul Qayoom, Secy.