

In the High Court of Judicature at Madras**Dated : 23.03.2015****Coram :****The Hon'ble Mr.Justice M.M.Sundresh****O.P.No.665 of 2013**

M/s.Bhamari Bai

.. Petitioner

-VS-

S.Anbazagan

.. Respondent

Prayer: Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint an Arbitrator in agreement cum memorandum of understanding dated 20.06.2006 to resolve the disputes between the petitioner and the respondent under the Arbitration and Conciliation Act, 1996.

For Petitioner	: Mr.T.K.Viswanath
For Respondent	: Mr.T.Viswanatha Rao

ORDER

The petitioner's husband is a owner of the shop bearing No.11/2, Kasi Chetty lane, Chennai – 600 079 and the respondent is a licensee. An agreement cum memorandum of understanding was entered into between the petitioner's husband and the respondent on 20.06.2006. As per the said agreement, the period of licence has been mentioned as 11 months, to be renewable at the option of the second party for further five periods without altering the licence fee. The agreement also says that thereafter renewal of licence shall be done on consent of both parties on fresh terms and conditions. The agreement contains the following clause :

"Both parties agree that this Memorandum of Understanding is among themselves and if any dispute arises on this agreement, both parties agree to settle the same among themselves by Arbitration without resorting any court proceedings."

2. Seeking permanent injunction restraining the petitioner from interfering with the peaceful possession and enjoyment of the suit schedule mentioned shop, the respondent approached City Civil Court, Chennai by filing suit a suit in O.S.No.3438 of 2012 By the judgment and decree dated 1.2.2013, the City Civil Court dismissed the suit by directing the parties to refer their dispute to the arbitrator as per the memorandum of understanding dated 20.6.2006. It has been informed by both the counsels that as against the said judgment and decree rendered by the City Civil Court, an appeal has been preferred in A.S.No.165 of 2014 on the file of Principal City Civil Court, Chennai. However, the proceedings pending on the file of Principal City Civil Court in A.S.No.165 of 2014 has been stayed by this Court in C.R.P.(NPD) No.2509 of 2014 based upon the premise that the appeal has been numbered without an application for condonation of delay. After the disposal of the suit filed by the respondent, the petitioner, who is owner of the premises, filed this petition in pursuant to the legal notice issued on 24.7.2013 seeking to appoint an arbitrator.

3. Learned counsel for the petitioner submitted that in view of the

existence of the arbitration clause in the memorandum of understanding executed between the petitioner's husband and the respondent, the learned arbitrator will have to be appointed to go into the claims made by the petitioner as against the respondent.

4. The learned counsel for respondent submitted that as against the judgment and decree of the trial Court an appeal has been filed and though it has been stayed in the revision, in view of the said proceedings, the arbitrator is not required to be appointed as he cannot go into the issue of eviction.

5. The suit filed by the respondent is one for permanent injunction. Even assuming that on appeal the said suit is decreed for the argument sake, it will not take away the jurisdiction of the arbitrator. The parties are governed by the arbitration clause. The existence of the arbitration clause is not in dispute. The issue of maintainability of arbitration can very well be raised before the learned arbitrator. The agreement merely states that it is one of licence.

6. Considering the above, this Court is inclined to appoint an arbitrator. Accordingly, Mr.M.Sambasivam, District Judge (Retd.),

M.M.SUNDRESH,J.

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residing at No.10, First Street, First Floor/Flat No.G.2, Temple View Apartment, Temple Colony, Adambakkam, Chennai – 600 088 (Mobile No.944410264) is appointed as a sole arbitrator to go into the claims made by the petitioner as against the respondent to resolve the dispute between the parties, after issuing notice to the parties and upon hearing them. It is made clear that it is well open to the respondent to make his counter claim. It is further made clear that all the issues are left open for adjudication by the learned Arbitrator including the question of jurisdiction, as the observations made in this order are *prima facie* in nature. The arbitrator shall pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

The original petition is, accordingly, allowed.

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23.03.2015

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