

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT
HYDERABAD

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

ARBITRATION APPLICATION No. 121 of 2013

DATE: 17.04.2015

Between:

Sri Narsing Das Toshniwal

... Applicant

And

Shri Ch. Rajgopal Rao

& another.

... Respondents

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

ARBITRATION APPLICATION No. 121 of 2013

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ORDER:

This application for appointment of arbitrator has been taken up.

The agreement, which is said to have contained the arbitration agreement, is in Telugu language.

The translation supplied by the petitioner is not found to be understood by me.

As such, I got the arbitration clause to be translated by the officers of this Court, who know English and Telugu languages, and this translation is kept on record and the same is also shown to the learned lawyer for the applicant. The said translation reads as follows:

“With regard to the development agreement if any disputes arose both the parties have to come to a settlement, but should not approach any Court. As per the advice of the elders and the arbitrators, who are the well wishers of both the parties, they can settle the disputes as per the circumstances prevailing at that time. This development agreement is made into two copies, one copy each is being taken by each party.’

Learned lawyer for the applicant in spite of having read this, says that this clause contains arbitration. I am unable to accept this contention. In order to have a valid and lawful agreement, requirements under Section 7 of the Arbitration and Conciliation Act must satisfy. The said section reads as follows:

‘7. Arbitration agreement:

(1) In this part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in, -

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

I do not find any arbitration agreement entered into by any of the method mentioned in the aforesaid Section. In the counter affidavit it has been specifically denied that there has been any arbitration agreement. It is the initial burden of the applicant to state that there has been arbitration agreement and it cannot be improved by way of reply. Mere use of the word “Arbitrators” does not make the same arbitration agreement. Therefore, this application is dismissed holding that there has been no arbitration clause. However, it would be open for the applicant, if so advised, to approach the appropriate civil Court for remedy.

Kalyan Jyoti Sengupta, CJ.

Date: 17.04.2015

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