

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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CIVIL REVISION PETITION No.2423 OF 2015

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This revision petition is filed under Article 227 of the Constitution of India by the plaintiff in O.S.No.95 of 2010 on the file of III Additional District Judge, East Godavari at Kakinada, aggrieved by the order, dated 23.02.2015, passed in I.A.No.2945 of 2010 in the said Suit.

Respondent – defendants have leased the suit schedule property to the petitioner – plaintiff for a period of 36 months i.e., from 01.09.2007 to 31.08.2010 and accordingly, the parties have entered into a lease agreement on 08.08.2007. Subsequently, a Memorandum of Understanding (MOU) was entered into between the parties on 09.08.2007 including additional terms and conditions and pursuant to the same, an amount of Rs.60,48,000/- was paid by the petitioner as refundable security deposit. As disputes have arisen between the parties, petitioner – plaintiff has filed the aforesaid Suit for recovery of sum of Rs.65,74,176/- deposited as advance amount with the respondent – defendants. In the said Suit, the respondent – defendants have filed I.A.No.2945 of 2010, under Section 8 of the Arbitration and Conciliation Act, 1996, to stall all further proceedings in the Suit and to refer the matter to the Arbitrator for adjudication in view of Clause 32 of lease deed, dated 08.08.2007. The Court below, by impugned order, dated 23.02.2015, has allowed such application.

In this revision petition, it is contended by the learned counsel for petitioner that the amount deposited is pursuant to the MOU, dated 09.08.2007, in which there is no Clause for referring the

dispute to the Arbitrator and further, the respondents have also raised some claims with regard to Meghana Hospitals, which is beyond the scope of the lease deed and as such, the matter cannot be referred to the Arbitrator, but the Court below, without appreciating the case in proper perspective, has referred the matter to the Arbitrator.

On the other hand, it is contended by the learned counsel for respondents that the deposit of Rs.60,48,000/- is made pursuant to the MOU, which is in continuation of the registered lease deed, dated 08.08.2007, wherein there is a specific provision under Clause 32 that if any dispute arises between the parties, the same has to be referred to the Arbitrator and hence, the Court below has rightly referred the matter to the Arbitrator.

As per Clause 32 of the lease deed, dated 08.08.2007, in the event of arising any dispute between the parties to the agreement, the same shall be referred to the Arbitrator. The said Clause reads as under:

“Any and all claims, difference in disputes arising out of, under, pursuant to or in connection with this deed including the breach, expiry, termination, existence, legality, and enforceability hereof, or anything done or omitted to be done pursuant hereto, shall be referred to arbitration under the provisions of the Arbitration and Conciliation Act 1996 (“Act”) or any statutory modifications or any enactment’s there for the time being in force, provided the parties fail to reach an amicable settlement within sixty (60) days after such disputes have arisen the arbitration shall be conducted in English and shall be held in Bangalore by a single arbitrator to be appointed in accordance with the Act. Each party shall bear his share of the cost of arbitration including interest charges.”

In this case, it is not in dispute that as per Clause 32 of the lease deed, dated 08.08.2007, whenever any dispute arises between the parties, the same has to be referred to the Arbitrator. Further, from

a perusal of the copy of MOU, dated 09.08.2007, it is clear that the terms and conditions in the MOU are the additional terms and conditions in continuation of the terms and conditions as mentioned in the lease deed, dated 08.08.2007, and the deposit of Rs.60,48,000/- is made only pursuant to the lease deed, dated 08.08.2007. In that view of the matter, the contention of the learned counsel for petitioner that in the absence of any Arbitration Clause in the MOU, dated 09.08.2007, the dispute cannot be referred to the Arbitrator, cannot be accepted. Hence, we do not find any merit in this revision petition, so as to interfere with the impugned order.

Accordingly, the revision petition is dismissed. Miscellaneous Petitions, if any, pending in this revision petition, shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

September 22, 2015

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