

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

ARBITRATION APPLICATION No. 191 OF 2010

07-08-2015

Between:

Smt. B. Anitha and another

... Applicants

And

Smt. Dasari Jamuna Kumari

... Respondent

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

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ARBITRATION APPLICATION No. 191 OF 2010

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PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard learned counsel for the applicants.

By this application under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996, the applicants seek appointment of Arbitrators.

On last occasion (10-07-2015), the following order was passed:

“This arbitration application has been adjourned from time to time and on most occasions, at the request of learned counsel for the respondent.

Today, once again, learned counsel for the respondent is absent. Hence, stand over to 24.7.2015.

It is made clear that if on the next date, learned counsel for the respondent does not appear, this court will pass appropriate order, after hearing the applicant.”

Today, none appears for the respondent. Hence, I am constrained to pass this order ex parte.

Applicant No.1 had entered into an agreement of sale to purchase flat No.2, first floor of Fortuna Residency measuring 1795 square feet build up area with two car parkings in the stilt together with 60.20 square yards of undivided share of land situated in premises Nos.8-2-12, 13 and 14, rear side of Road No.12, Banjara Hills, Hyderabad (for short, 'the flat'), from the respondent. Applicant No.1 having paid total consideration to the respondent, she executed an agreement of sale-cum-GPA dated 20-12-2008. Thereafter, at the request of respondent, the applicants granted licence to the respondent to stay in the flat for a period of one year and, accordingly the respondent had executed the licence agreement dated 27-12-2008 to that effect and the applicants permitted her to stay in the flat. After expiry of the one year licence period, the respondent extended the licence period for one month and made

endorsement to that effect on the licence agreement. On completion of the extended period, it is alleged, that the respondent failed to vacate the flat and, thus, from 01-02-2010, is in unauthorised and illegal possession thereof. The applicants, therefore, requested the respondent to vacate the flat and handover possession to them.

There was a clause in the agreement whereby the respondent undertook to vacate the licenced premises failing which she had undertaken to pay damages at the rate of Rs.5,00,000/- per month for such delayed period and also to pay liquidated damages for the licence agreement. In view of the breach committed by the respondents, the applicants invoked clause No.17 of the lease agreement. Clause 17 reads thus:

“Any dispute arising between the parties herein regarding, the interpretation or implementation of any of the clauses of this Agreement, the same shall be referred to arbitration under the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be referred to a panel of three arbitrators one each to be appointed by the respective parties and the third arbitrator shall be the presiding arbitrator shall be mutually selected and appointed by the said two arbitrators.”

The applicants through their advocate gave notice dated 08-09-2010 calling upon the respondent to nominate an arbitrator on her behalf. The applicants claim that the notice was served on the respondent but she chose not to reply or respond to the notice.

In this backdrop and having considered the order dated 10-07-2015, the following order is passed:

“Sri P. Rajasripathi Rao, advocate nominated by the applicants is appointed as Arbitrator on their behalf. Sri Justice N. Ravi Shankar, a retired Judge of this Court is appointed as Arbitrator on behalf of the respondent. Both the Arbitrators will appoint third Arbitrator in terms of the agreement and after composition of Arbitral Tribunal, the arbitration proceedings may be held in accordance with law. All the Arbitrators shall fix their remuneration and the estimated costs and charges of the arbitration proceedings upon deliberation and consultation with the parties. I desire that the Arbitrators shall complete the arbitration proceedings by making publication of award within a period of six months from the date of entering upon reference.”

Arbitration application is accordingly disposed of.

DILIP B. BHOSALE, ACJ

07-08-2015

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