

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.62 OF 2012

ORDER:

This is an application seeking appointment of an Arbitrator for taking requisite measures in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

2. It is not in dispute that there is an arbitration agreement between the applicant and the 1st respondent, which is part of an agreement dated 18.11.2007 wherein the applicant had agreed to provide security services at various locations of the 1st respondent-unit.

3. The plea of the respondent in opposition to this arbitration request is that the second respondent, who is impleaded in his personal capacity is not a party to the contract and that the arbitration clause cannot be pressed into service since the term for which the contract of providing security services was entered into, had expired.

4. In this context, it is profitable to quote para-3 of the counter-affidavit.

“I submit that the provision of security services to the first respondent’s units by the petitioner were far from satisfactory and to say the least, it was not at all in keeping with the conditions enshrined in the agreement dated 18.11.2007. Strictly in conformity with the clauses contained in the agreement dated 18.11.2007, the respondents made certain deductions in lieu of shortfall in the provision of staff agreed to be deployed, causing loss and damage to material, shortfall in working hours of security staff provided etc., and violated the clauses provided in the agreement dated 18.11.2007 vide item numbers 9,10,14,15,20 etc.”

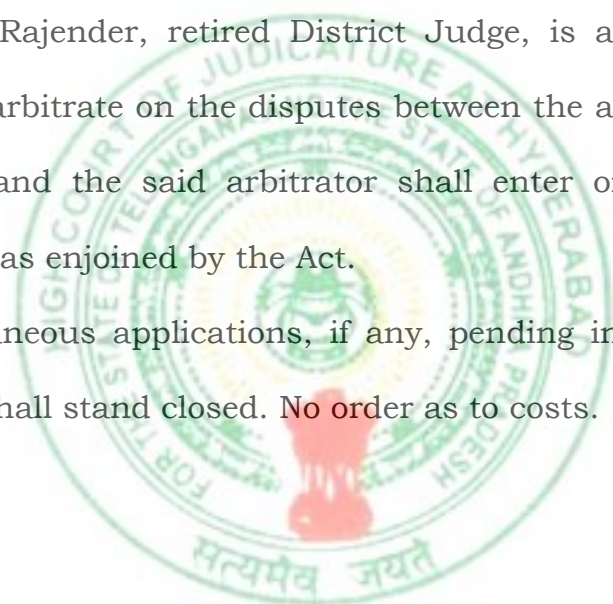
5. The afore-quoted paragraph-3 of the counter-affidavit clearly indicates that there is likelihood of disputes pending for consideration even though the obligation to provide security services under the contract would have expired by 27.11.2008. Therefore, the disputes would continue to be available for arbitration since the arbitration agreement would operate for resolution of disputes as between the parties in terms of the subject agreement.

6. For the aforesaid reasons, this application succeeds.

7. In the result, the Arbitration Application is allowed appointing an Arbitrator.

8. Sri M. Rajender, retired District Judge, is appointed as the Arbitrator to arbitrate on the disputes between the applicant and the respondents and the said arbitrator shall enter on reference and proceed with, as enjoined by the Act.

Miscellaneous applications, if any, pending in the Arbitration Application, shall stand closed. No order as to costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 30.08.2018

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