

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.166 of 2018

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R. K. Associate And Hoteliers Private Limited A-25 1st Floor Hospital Road,
Janagpura A New Delhi through its Authorised Signatory Mr. S. B. Agarwal.

... .. Petitioner/s

Versus

1. The Chief Commercial Manager (Catering), East Central Railway, Rail
Niketan, B Block, Dighikalan, Hajipur, Vaishali, Bihar-8444101.
2. Indian Railway Catering and Tourism Corporation Limited 11th Floor B-
148 Statesman House, Barakfamba Road New Delhi-110001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate
For the Respondent/s : Mr. Kumar Alok, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

2 03-05-2019 Heard learned counsel for the applicant and the

learned counsel for the opposite parties no. 1 and 2.

The termination of an agreement and forfeiture of
security deposit is a dispute which is sought to be raised to be
resolved by an arbitration through this application under Section
11(6) of the Arbitration and Conciliation Act, 1996.

Learned counsel for the opposite parties has opposed
the application contending that since the power to forfeit
security is contained in clauses 16 to 18 of the arbitration
agreement and the forfeiture already having been made, there
remains nothing to be resolved through an Arbitrator. It is also
submitted that the applicant has not been able to disclose any
further cause of any such dispute which may require a resolution



through the appointment of an Arbitrator.

Learned counsel for the applicant contends that the contract was terminated on 07.08.2017 whereafter a letter was despatched for appointing an Arbitrator in terms of the arbitration clause 20.1 and 20.2 vide a letter dated 4th October, 2017. It is alleged that no steps were taken to appoint an Arbitrator and, therefore, the applicant has moved this application.

A counter has been filed on behalf of the opposite parties and the response is that once the applicant had defaulted and the forfeiture has been made, there is no occasion for appointment of an Arbitrator once the contract has already been terminated. Other allegations were also made on the merits of the claim.

A rejoinder to the same has been filed by the applicant and having perused the same, I find that clause 20.1 defines the dispute as any controversy or claim of any kind or nature arising under or in connection with the agreement between the parties.

In the instant case, the nature of the dispute therefore, in my opinion, falls within the said category and consequently once the respondent-Railways have failed to exercise their option



to appoint Arbitrator, the present application is very much maintainable keeping in view the provision of Section 11(5) read with Section 11(6) of the Arbitration and Conciliation Act, 1996.

Accordingly, this application is disposed of with a direction that Hon'ble Mr. Justice Ram Nandan Prasad (Retired) shall enter upon the dispute and resolve the same in terms of the provisions of the 1996 Act.

The parties shall appear before the Arbitrator on 21st of June, 2019, subject to his availability and his convenience the matter shall proceed thereafter.

The Registry shall transmit this order to the sole Arbitrator for proceeding further in the matter.

(Amreshwar Pratap Sahi, CJ)

Sunil/-

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