

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.72 of 2017

ORDER:

This is an application for appointment of an Arbitrator under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act').

It is the case of the applicant that she is the absolute owner of the building bearing Municipal No.5-265, Miyapur, consisting of stilt, ground and three upper floors. In November, 2011, the respondent – Rao's Educational Society approached her and requested to let out the said property to it for the purpose of running a school. After negotiations and understanding, both the parties had entered into a registered lease deed dated 05.12.2011, in respect of the subject property, except stilt floor. The said lease was followed by an addendum dated 06.12.2011. According to the said lease deed, the respondent has to pay the rent @ Rs.1,00,000/- per month and maintenance charges @ Rs.55,000/- per month. The respondent had paid Rs.10,00,000/- towards interest free security deposit. However, since the inception of the lease, the respondent is irregular in paying the rents. Further, it had stopped paying maintenance charges and rents since June, 2014. Thus, as on the date of filing of the application, the respondent is liable to pay Rs.21,40,206/- towards arrears of rent, and Rs.19,47,068/- towards arrears of maintenance, totalling to Rs.40,87,274/-. Therefore, the

applicant got issued the termination notice *vide* legal notice dated 14.12.2015. Though the respondent had received the said notice, it had neither responded to the same nor vacated the subject property. Therefore, the applicant again got issued a notice dated 07.07.2016 to the respondent by invoking the arbitration clause and nominating an Advocate as sole Arbitrator. The respondent had replied to the said notice denying the receipt of the notice dated 14.12.2015. As the name suggested by the applicant is not acceptable to the respondent, it had suggested the name of a retired District Judge as sole Arbitrator. Thereafter, the applicant got issued a fresh notice dated 12.09.2016 calling upon the respondent to vacate the petition schedule premises on or before 31.10.2016, but the same was returned as “Not Claimed”. Hence, the applicant filed this application.

Admittedly, the lease deed dated 05.12.2011 entered between the parties, contains arbitration clause, which reads as under:

“In the event there is any difference of opinion, dispute, controversy or claim between the parties arising out of this Deed, they shall try to first meet and attempt to amicably resolve the said differences amongst themselves.

In the event the Parties are unable to amicably resolve differences and the dispute still persists, the same shall be referred to binding arbitration by a sole arbitrator mutually appointed by the parties. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and the decisions of the arbitrators shall be final and binding on both the parties. The place of arbitration shall be Hyderabad and the language to be used in the arbitration proceedings shall be English. Costs of the

arbitration shall be borne by both parties or as determined by the arbitrator (s)."

The respondent has not contested the matter. No counter affidavit is filed. There is no dispute as to the existence of the arbitration agreement.

Under such circumstances, sole arbitrator is required to be appointed as it would be the requisite measure in terms of Section 11(5) of the Act.

Accordingly the arbitration application is allowed, and Sri Justice Neelam Sanjeeva Reddy is appointed as sole arbitrator to adjudicate the claims and disputes between the parties and to pass an award in accordance with law.

The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23-10-2015, which shall be borne by both parties in equal proportion.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A. RAJASHEKER REDDY, J

Date: 19.11.2019
va