

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.116 OF 2015

ORDER

By way of this application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), the applicants seek appointment of a sole Arbitrator for resolution of their claim for a sum of Rs.1,11,41,666/- raised against the respondent company.

The applicants claim to be the absolute owners and possessors of the commercial building complex named 'Keshava Heights' situated at Kakatiya Nagar Colony Co-operative Housing Society Layout, Habsiguda, Uppal Mandal, Ranga Reddy District. The first applicant is the mother of the second and third applicants. The left side portion of this commercial building complex, on the ground and first floors, admeasuring approximately 3,850 square feet, along with four designated parking areas in the sub-cellar and cellar area, was taken on lease by the respondent company under registered lease deed dated 27.08.2014, bearing Document No.3475 of 2014. The monthly lease amount to be paid by the respondent company was Rs.3,50,000/-. Claiming that default was committed in payment of monthly lease amounts from February, 2015, the applicants issued demand notice dated 11.03.2015 followed by e-mail notice dated 24.03.2015. The applicants claim that the respondent company vacated the first floor in the month of June, 2015, and the entire leased premises in the month of July, 2015, without paying lease rentals from February, 2015 to July, 2015. This was alleged to be in violation of the lock-in period of three years agreed upon between the parties. The applicants then got issued legal notices dated 20.06.2015 and 15.09.2015. By the last legal notice dated 15.09.2015, the applicants invoked the

arbitration agreement contained in Clause No.18 of the registered lease deed dated 27.08.2014 and proposed the name of a retired High Court Judge as the sole Arbitrator. They called upon the respondent company to give its concurrence to the said appointment within a week's time.

Having received the said notice, the respondent company got issued reply legal notice dated 13.10.2015, contesting their claim and asserting that it never committed any default and that all the defaults and violations were committed by the applicants themselves. The respondent company further stated that it was not liable to pay any monies and in the event the applicants were interested in arbitration, it would provide the name of an Arbitrator after one month if the applicants agreed to incur the legal expenditure. Hence, the present application.

Conventional means of service of notice having failed, substituted service of notice upon the respondent company was permitted, *vide* order dated 15.09.2017, by way of publication of the notice in the Hyderabad Editions of Deccan Chronicle English Daily Newspaper and Andhra Bhoomi Telugu Daily Newspaper. Having effected such substituted service, the applicants filed a memo in proof of service along with copies of the newspapers. Despite such substituted service, the respondent company did not choose to enter appearance before this Court.

Clause 26 of the registered lease deed dated 27.08.2014 speaks of dispute resolution and jurisdiction and it reads as under:

'26. DISPUTE RESOLUTION AND JURISDICTION

26.1 Disputes:-

The Parties shall attempt to amicably settle any dispute arising out of this Agreement and the obligations thereunder (the "Dispute"). Either Party may give written notice of a Dispute to the other Party within 15 days or immediately based on the seriousness of the occurrence of the event which gives rise to such Dispute or the day that such event came to the notice of the applicable Party.

26.2 Arbitration:-

- (a) Thereafter the said dispute shall be resolved or addressed by either party within 30 days from the date of notice.
- (b) If the Lessors and Lessee are not able to resolve “any dispute” as regards to this ‘Lease Deed’ that may arise among them, the parties agree to resolve the said dispute or any clarification for enforcement of rights of the parties under this agreement by way of Arbitration by appointing a sole Arbitrator who would be a Retd. High Court Judge who shall resolve the dispute in an impartial and judicial manner owing an equal obligation of fairness towards both sides.
- (c) The said arbitrator shall resolve the said dispute in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- (d) The Award by the Arbitrator shall be final and binding on both the parties to the agreement. The venue of Arbitration proceedings shall be at Ranga Reddy District or Hyderabad, Telangana State only.
- (e) Both the parties shall mandatorily exhaust the alternative efficacious in-house mechanism of Arbitration as covenanted in this Agreement. Without exhausting this remedy the parties are not entitled to approach any court of law.

26.3 Dispute Settlement & Jurisdiction.

Any dispute arising out of this Agreement shall be subject to the jurisdiction of the Courts in Ranga Reddy District, Telangana State, alone to the exclusion of all other courts in India. All claims and controversies hereunder shall be adjudicated exclusively in the court of Ranga Reddy District, Telangana State, and India where the Leased property is situated and the parties hereto irrevocably and exclusively subject themselves to the jurisdiction of courts in Ranga Reddy District, Telangana State, irrespective of where the cause of action has occurred. The parties shall not raise any arguments claiming that “the Courts at Ranga Reddy District are inconvenient” or “the Courts in Ranga Reddy District are in-appropriate” for adjudication of such disputes/claims or relief(s).’

Existence of the arbitration agreement is manifest in 26.2(b). As the respondent company has not chosen to come before this Court and contest this arbitration application, no further adjudication is required. The applicants are entitled to have a sole Arbitrator appointed for resolution of their claim under these circumstances.

The Arbitration Application is accordingly ordered appointing Sri Justice P.Swaroop Reddy, Retired Judge, erstwhile High Court of Andhra Pradesh, residing at Flat No.88, Ambience Fort, Attapur Ring Road, Rajendra Nagar, Hyderabad-48, as the sole Arbitrator for resolution

of the disputes between the applicants and the respondent company arising out of the registered lease deed dated 27.08.2014, in accordance with the provisions and mandate of the Act of 1996. 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 measure. No order as to costs.

SANJAY KUMAR, J

9th APRIL, 2019

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