

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION No.85 of 2018

ORDER

By way of this application filed under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), the applicants seek appointment of a sole Arbitrator to resolve their claim for a sum of Rs.45,13,394/- raised against the respondent partnership firm and its Managing Partner.

The parties hereto entered into a registered lease deed on 04.06.2014, bearing Document No.6796 of 2014, in relation to the Shop bearing No.EEF-1 situated on the first floor of the building named 'Tapadia Maruthi Infinity Mall' in Survey Nos.320/1 and 315/3 of Chandanagar Village, Serilingampally Mandal and Municipality, Ranga Reddy District. Disputes having arisen between them, the applicants addressed arbitration notice dated 19.07.2018 through their Advocate nominating an Arbitrator to resolve their claim and called upon the respondents to nominate their Arbitrator within a time frame. No reply was received to this notice before the filing of this Arbitration Application. The applicants therefore approached this Court for appropriate relief in this regard.

Notice having been ordered on this application, Sri Resu Mahender Reddy, learned counsel, entered appearance for the respondents. No counter-affidavit was however filed by them contesting the application.

Perusal of the registered lease deed dated 04.06.2014, bearing Document No.6796 of 2014, reflects that Clause 7.2 provided for settlement of disputes between the parties. This Clause reads as under:

'7.2 Any dispute under this Lease Deed shall be settled between the parties amicably. If the parties failed to resolve the dispute amicably within 30 days from the date of such dispute, the same shall be referred to the arbitration. Each

party shall nominate its own Arbitrator and the two Arbitrators thus nominated shall appoint the Chairman of Arbitral Tribunal. The award passed by the Arbitral Tribunal shall be final and binding the parties. The place of arbitration shall be at Hyderabad/Secunderabad and the provisions of Arbitration and Conciliation Act, 1996 or any other law for time being in force shall apply to the arbitration proceedings. In connection with the aforesaid arbitration proceedings, the courts at Rangareddy district only shall have the jurisdiction to entertain and try all actions and proceedings, the schedule property is situated at Rangareddy District.'

It was on the strength of this arbitration agreement that the applicants got addressed arbitration notice dated 19.07.2018 to the respondents.

In the light of the amended provisions of Section 11 of the Act of 1996 which came into effect on 23.10.2015, and more particularly Section 11(6-A) thereof, while dealing with an application under Section 11(5) & (6), the Court shall only examine as to whether an arbitration agreement is in existence and no more.

In the case on hand, the existence of such an arbitration agreement is not in dispute. However, the arbitration agreement, as set out *supra*, provides for an Arbitral Tribunal comprising three members. This being the situation, the learned counsel appearing for the parties were asked to clarify as to whether they wish to have an Arbitral Tribunal appointed in accordance with the aforestated arbitration agreement. Thereupon, joint Memo dated 28.02.2019 was filed, duly signed by both parties and their learned counsel, wherein they prayed that a sole Arbitrator may be appointed to resolve their disputes.

Keeping in mind the quantum of the claim raised by the applicants and their joint plea for appointment of a sole Arbitrator, the Arbitration Application is ordered appointing Sri K.Sanga Reddy, Retired District

Judge, residing at Flat No. 108, H.No.6-1-22, Babukhan Aneesh Tower, Walker Town, Padmarao Nagar, Secunderabad, as the sole Arbitrator for resolution of the claim for a sum of Rs.45,13,394/- raised by the applicants against the respondents 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

8th MARCH, 2019

Svv

