

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Arbitration Application No.60 of 2014

O R D E R

This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, read with paragraph No.3(i)(c) of the Scheme for Appointment of Arbitrators, 2006, to appoint an arbitrator to resolve the disputes arising out of the agreement dated 29.08.2008 between the applicant and the respondent.

The case of the applicant is that he is the running the restaurant in the subject premises under the name and style of "Deccan Queen Restaurant" and entered into the management agreement dated 29.08.2008 with the respondents for running the said restaurant business. As disputes arose with regard to payments, the case of the applicant, is that the respondents issued legal notice dated 26.10.2012 stating that the cheques issued by the applicant have been dishonoured. In response to the same, the applicant issued legal notice dated 5.11.2012 denying the allegations in the notice dated 26.10.2012, and seeking to invoke the arbitration clause in the management agreement dated 29.08.2008. As there was no response, applicant got issued another legal notice dated 18.03.2014, seeking to pay the amount, and in case of failure to settle the issue, to give consent for appointment of named arbitrator in the said legal notice. As there was no response, the applicant filed the present arbitration application.

Counter affidavit is filed on behalf of respondents 1 and 2. In the counter affidavit, the execution of management agreement dated 29.08.2008 is not disputed, but it is stated that the same has been cancelled and new agreement dated 30.11.2011 was executed. In the counter affidavit, the claim of the applicant is disputed.

Heard the learned counsel for the applicant.

Learned counsel for the respondents seeks time for filing the subsequent agreement dated 30.11.2011.

The arbitration application was filed in the year 2014 and the counter affidavit was also filed. Though more than five years have elapsed, the respondents have not chosen to file the agreement dated 30.11.2011. At this length of time, this court is not inclined to grant any further time for filing the said agreement, and the matter requires to be decided on merits.

Clause 21 of the management agreement dated 29.08.2008 provides for arbitration and the said clause is extracted as under for ready reference:

“Further it is agreed that in the event of any dispute or difference of opinion the parties would seek to resolve the same in at least two sittings within a period of 15 days, failing which the matter would be referred to an Arbitrator as is mutually agreed upon to resolve the disputes and differences arising out of the contract in accordance with the provisions of Arbitration and Conciliation Act, 1996 and the proceedings of the arbitration shall be held at Hyderabad.”

From a reading of the above clause it is clear that in the event of any dispute or differences arising between the parties, the same was agreed to be resolved by mutual deliberations in two sittings within fifteen days thereof, and in case of failure to resolve the same, the matter was agreed to be referred to arbitrator mutually agreed upon.

In the present case, as per the case of the applicant, he issued two notices dated 05.11.2012 and 18.03.2014, seeking for payment and in case of default, for referring the matter to arbitrator, and as the respondents failed to respond, filed the present application.

As noted above, though the respondents pleaded that the management agreement was cancelled, failed to produce the subsequent agreement.

In view of the same, and having regard to the facts and circumstances of the case, and clause 21 of the management agreement dated 29.08.2008, this court is inclined to allow the arbitration application.

Accordingly, the arbitration application is allowed, and Sri V.Ravinder Rao, Senior Advocate, High Court for the State of Telangana, Hyderabad, is appointed as arbitrator to resolve the disputes between the parties, and pass 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 shares.

It is open to the parties to agitate all the issues before the above named Arbitrator, who shall consider the same and pass award in accordance with law uninfluenced by any observation made in this order.

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

A.RAJASHEKER REDDY,J

DATE:07—01—2020

Note:

Mark a copy of this order to:
Sri V.Ravinder Rao,
Senior Advocate,
High Court for the State of
Telangana, Hyderabad.

B/O
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