

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 16 OF 2021

Mrs. Kiran Prayag Jha

...Petitioner

Versus

M/s. QED42 Pvt.Ltd.

...Respondent

Mr. Abhineet N. Pange a/w Mr. Swapnil R. Chopade i/by Mr. Hrishikesh Giri, Mr. Prateek Jha for the Petitioner.

Mr. Shon D. Gadgil a/w Mr. Murtaza Chherawala, Mrs. Asmita Mogre, Ms. Adwaita Bhagwat for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 13 October 2021

ORDER :

1. Heard learned Counsel for the parties.

2. By this Arbitration Petition, the Petitioner is seeking appointment of Arbitrator in connection with the agreement dated 24th July 2018 between the parties in the present Petition.

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3. The Petitioner is the owner of Office No. 401, 4th Floor, Sapphire Plaza, Sakore Nagar, Viman Nagar, Pune - 411 014 (hereinafter referred to as "**the licence premises**"). He had entered into an Leave and Licence Agreement with the Respondent for a period of five years commencing from 1st September 2018. Under the said Leave and Licence Agreement, the Respondent agreed to pay Rs. 2,70,000/- per month with maintenance of Rs. 2.50/- sq.ft. and as per the agreement the licence fee would increased to 5% after every 12 months.

4. Leave and Licence Agreement was registered with the office of the Sub-Registrar dated 24th July 2018.

5. It is the Petitioner's case that the parties had agreed on lock-in period till August 2021 and the terms regarding the said lock-in period are recorded in Clause 6 of Leave and Licence Agreement. It is the further case of the Petitioner that the Respondent suddenly stopped paying licence fees from the month of April 2020 without any communication or notice to the Petitioner.

6. A legal notice dated 3rd September 2020 was issued on behalf of the Respondent alleging that the Respondent had orally informed the Petitioner's husband that the Respondent would vacate the licenced premises in January, 2020 and will pay licence fees only till the month of June, 2020. Notice further stated that since the Government had imposed a lockdown, they were not liable to pay licence fee for the period 25th March 2020 to 8th June 2020. In paragraph 2 F of the Petition, the claim of the Petitioner has been set out and the Petitioner has demanded a sum of Rs. 47,26,684/- break up of which is as under :-

Sr.No.	Partriculars	Amount
1	License Fee (Till Aug 2021)	45,49,614/-
2	Maintenance (Till Aug 2021)	1,61,070/-
3	Other Arrears (Electricity bill till August 2020)	33,690/-
Total Amount Payable		47,26,684/-

7. The Petitioner invoked arbitration by its Advocate's letter dated 24th October 2020 wherein the lock-in period under clause 6 of the Leave and Licence Agreement has been referred to and it is contended that the Respondent was to pay

licence fee till 31st August 2021 and the Respondent has neglected to make payments and is in default of a sum of Rs. 47,26,684/- as per terms of the Leave and Licence Agreement. In view thereof, the Petitioner has invoked arbitration under clause 23 of the Leave and Licence Agreement. They have nominated their arbitrator and called upon the Respondent to appoint arbitrator to constitute an Arbitration Tribunal within 15 days from the receipt of the notice of invoking arbitration.

8. This has been responded to by the learned Advocate for the Respondent wherein it is contended that the Respondent is not bound to appoint the arbitrator and that the Respondent has not agreed to resolve their dispute through arbitration in view of the claims failing within the jurisdiction of the Court of Small Causes under the Provincial Small Cause Courts Act, 1887.

9. Learned Counsel for the Petitioner has referred to clause 6 in the Leave and Licence Agreement which provides for lock-in period and in clause 6.1 it is provided that the licensee itself reserves the right to terminate the agreement by providing two months written notice to the licensors after

the lock-in period expires. Under clause 6.2 it is provided that the period from 1st August 2018 to 31st August 2021 shall be called lock-in period.

10. He has submitted that the Respondent could not have terminated the agreement, as they had breached the lock-in period by stopping the payment of licence fee from the month of April 2020 without any communication or notice to the Petitioner. He has referred to the dispute resolution clause 23 of the Leave and Licence Agreement which provides “In the event of any dispute or difference between the licensors and licensee or vice versa, as to any clause or provisions of the Agreement or as to the interpretation thereof or as to any account or as to the rights, liabilities, acts or omissions of either the Licensor or the Licensee arising under or by virtue of these presents or otherwise in any way relating to the Agreement or any Agreement entered into pursuant to the Agreement or made in pursuance hereof, such dispute or difference shall be referred to arbitration at Pune with a panel of 3(three) arbitrators, 1(one) each to be appointed by the Licensor and the Licensee and the 3rd (third) to be appointed unanimously by the 2(two) other arbitrators and such

arbitration proceedings shall be held in Pune in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory re-enactment or modification thereof for the time being in force. The Award shall be final and binding on the Licensors and the Licencee. He has thereafter, referred to the notice invoking the arbitration dated 24th October 2020 and has stated that in conformity with the arbitration agreement in clause 23 of the Leave and Licence Agreement, the Petitioner has invoked arbitration.

11. Learned Counsel for the Petitioner has thereafter, contended that there are certain further amounts which are due and payable by the Respondent to the Petitioner on account of damage having been caused to the licensed premises by the Respondent and in that context, he has referred to the licensee's covenants in clause 26 of the Leave and Licence Agreement and in particular clause 26.1(4), (7) and (8). He has submitted that these disputes have also arisen.

12. Learned Counsel for the Applicant has referred to the judgment of the Supreme Court in **Vidya Drolia**

and Ors. Vs. Durga Trading Corporation¹ and in particular paragraph 60 and 66 thereof.

13. He has submitted that as per this decision, the ratio laid down in **Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia** is overruled and the Supreme Court has held that the landlord-tenant disputes are arbitrable as per the Transfer Of Property Act, 1882 does not forbid or foreclose arbitration. The Supreme Court has further held that the landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific Court or forum have been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.

14. He has submitted that since the dispute between the Petitioner and the Respondent governed matters which are not included under Section 26(1) of the Provincial Small Cause Courts Act, 1887, these disputes are certainly arbitrable. He has further submitted that the Supreme Court

¹ 2020 SCC OnLine SC 1018

has duly laid down that the dispute of the landlord-tenant are also arbitrable and thus, there is no bar for the parties to go in for arbitration.

15. Learned Counsel for the Respondent has submitted that the notice invoking arbitration as well as from what has been stated by the Petitioner in paragraph 2F, it is clear that the claim of the Petitioner who seeks appointment of arbitrator is with regard to licence fees and other charges such as maintenance and other arrears (electricity bill) payable till August 2021 which comes to an amount of Rs. 47,26,684/-. He has relied upon the decision of this Court in **Brainvisa Technologies Pvt.Ltd. Vs. Subhash Gaikwad (HUF)**². This Court has held that under Section 26(1) of the Provincial Small Cause Courts Act, 1887, the Court of Small Causes shall have jurisdiction to entertain and try all proceedings between the licensor and licensee or landlord and tenant including disputes relating to recovery of licence fees or charges or rent therefor. He has submitted in paragraph 9 of the said decision, this Court has held that inspite of the arbitration agreement and the non obstante clause contained in Section 5 of the Arbitration and

2 (2013) 7 Bom CR 540

Conciliation Act, 1996, the exclusive jurisdiction of the Small Causes Court to try and decide disputes specified in Section 41 of the Presidency Small Cause Courts Act, 1882 is not ousted. In that case the Suit was recovered for security deposit which was held not to constitute a suit for recovery of licence fee or charges or rent and thus, the sole arbitrator was appointed.

16. Learned Counsel for the Respondent has submitted that in the present case the dispute is for payment of licence fees and charges and would therefore, would fall within the exclusive jurisdiction of the Court of Small Causes. He has submitted that the Arbitration Petition is accordingly, not maintainable.

17. Having considered these submissions, it would be necessary to reproduce Section 26(1) of the Provincial Small Cause Courts Act, 1887, which is as under:-

“Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and

proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.”

18. From Section 26(1) of the Provincial Small Cause Courts Act, 1887, it is clear that a dispute with regard to recovery of licence fee or charges between licensor and licensee, the exclusive jurisdiction is with the Court of Small Causes.

19. This Court in **Brainvisa Technologies Pvt.Ltd. Vs. Subhash Gaikwad (HUF)**³, has held that inspite of the arbitration agreement and the non obstante clause contained in Section 5 of the Arbitration and Conciliation Act, 1996, the exclusive jurisdiction of the Small Causes Court to try and decide disputes specified in Section 41 of the Presidency Small Cause Courts Act, 1882, the corresponding provision being Section 26 of the Provincial Small Cause Courts Act, 1887

³ (2013) 7 Bom CR 540

extracted above, would not be ousted.

20. In the notice invoking arbitration as well as from the Arbitration Petition it is clear that the dispute of the Petitioner is with regard to non payment of licence fee till August 2021 and other charges such as, maintenance and other arrears (electricity bill till August 2020). The Petitioner's dispute arose as the Respondent stopped paying the licence fees from the month of April 2020 despite the lock-in period mentioned in Clause 6 of the Leave and Licence Agreement which was till 31st August 2021.

21. It is clear from the notice invoking arbitration dated 24th October 2020 that since the lock-in period under clause 6 of the Leave and Licence Agreement is till 31st August 2021, the Petitioner had been sending invoices to the Respondent during the lock-in period. However, the Respondent neglected to make payment of Rs. 47,26,684/- as per terms of the Leave and Licence Agreement.

22. In my view, from the decision of this Court in

Brainvisa Technologies Pvt.Ltd. (supra), it is clear that the dispute between the Petitioner and the Respondent in the present case is required to be tried by the Court of Small Causes and that the arbitration agreement under the Dispute Resolution Clause 23 of the Leave and Licence Agreement as well as the non obstante clause contained in Section 5 of the Arbitration and Conciliation Act, 1996 would not oust the exclusive jurisdiction of the Small Causes Court to try and decide the dispute.

23. The decision in **Vidya Drolia and Ors.** (supra) will not take a way from what has been held in **Brainvisa Technologies Pvt.Ltd.** (supra). On the contrary, it has been held in the decision of the Supreme Court that when the specific Court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations, such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration. Therefore, the decision of the Supreme Court also goes against the Petitioner.

24. Accordingly, the Arbitration Petition is

dismissed.

25. There shall be no order as to costs.

[R.I. CHAGLA J.]