

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.463 of 2020

1.P.S.Mohan

2.P.S.Saravanan

3.N.Muthukrishnan

4.Uma Natarajan

5.N.Balamutukumar

... petitioners

Vs.

M/s.Vectone India Mobile Services Private Limited

Having its registered office at

“Sai Sadan” TS.No.125 (North Phase)

SIDCO Thiru.Vi.Ka. Industrial Estate

Ekkaduthangal

Chennai 600 032

Rep by its Managing Director

... respondent

Prayer: Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator, or Arbitrators to resolve the disputes between the petitioners and the respondent company in accordance with the second part of Clause 21 of the Lease deed dated 12.07.018.

For Petitioners : Ms.Rathina Asohan

For Respondent : Mr.Bharadwajaramasubramanian

ORDER

The above petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole arbitrator to resolve the disputes between the petitioners and respondent company in accordance with lease deed dated 12.07.2018.

2. The petitioners are the owners of the premises at door No.149, Velachery – Tambaram Road, Pallikaranai, Chennai – 601 302, measuring an extent of 9680 Sq.ft. in the third floor of the building called MPL Silicon Towers. The said property was leased out by them to the respondent company for a period of 72 months, commencing from 12.07.2018 to 11.07.2024 with a lock-in-period of 36 months, commencing from 23.07.2018 to 22.07.2021.

3. Monthly rental was a sum of Rs.5,80,000/- with an annual escalation at 5 %. In addition, the respondent was to pay GST at 18% on the rent. Monthly rent was exclusive of the monthly maintenance charges which was payable towards the common amenities and which sum was payable to the maintenance agency. That apart, the electricity consumption charges and water consumption charges were not part of the monthly rental.

4. The petitioners would submit that the respondent had paid a sum of Rs.34,84,800/- as refundable interest free security deposit.

5. The petitioners would submit that the respondent company was paying the monthly rental in an irregular manner from 23.07.2018 till February 2020. This constrained the petitioners to issue legal notice dated 20.04.2020. Thereafter, there was series of exchange of notices between the petitioners and the respondent. In view of the dispute and on account of the failure of the conciliation efforts, the petitioners issued a notice dated 11.09.2020. The petitioner had invoked an arbitration clause as

contained in the latter part of clause 21 of the lease deed dated 12.07.2018. The respondent sent a reply dated 07.10.2020 refuting the arbitral clause in the agreement. Therefore, the petitioners have come forward with the instant petition.

6. On receipt of summons, the respondent has entered appearance through counsel and have filed their counter affidavit. At the outset, the respondent has denied existence of an arbitral clause in the lease agreement and had questioned the Jurisdiction of this Court. The respondent has also raised several defenses on the merits of the case. The respondent would also contend that the lease agreement being an unstamped and unregistered one cannot be enforced. The learned counsels appearing on the either side had put forward their respective contentions as made out in their affidavit and counter affidavit.

7. Heard the learned counsels and perused the records.

8. The entire case revolves around clause 21 of the lease agreement which is extracted herein below:

“In the event of any dispute between the parties in regard to interpretation of any of the terms of this lease deed or otherwise, the parties shall first make all reasonable efforts to resolve such disputes by conciliation by way of mutual discussions and agreement. However, if the parties fail to arrive at any such resolution and / or agreement, the parties shall refer the dispute to the Courts of Chennai for settlement.”

A reading of the clause would clearly show that the parties have not in clear terms agreed to resolve their disputes through arbitration.

9. Section 7 (1) of the Arbitration and Conciliation Act would read as follows:

“(1) In this part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen between them in respect of an defined legal relationship, whether contractual or not.”

10. When clause 21 of the lease deed is considered on the lines of Section 7 (1) of the Act, it is clearly evident that the parties have not in clear terms agreed to submit to arbitration all or certain of their disputes. Therefore, the petition under Section 11 (6) is not maintainable. Considering the fact that the lease agreement between the parties does not contemplate resolution of disputes through the arbitration, the petition filed for appointment of an arbitrator is dismissed. There shall be no order as to costs.

05.01.2021

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P.T. ASHA. J.,

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