7 17.05.2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)

F.M.A.T. 564 of 2021

Emami Foundation
Vs.
R.G. Scientific Enterprises Private Limited.

Mr. Debnith Ghosh
Mr. S. Dutt Majumder
Mr. S. Dasgupta .... For the Appellant.

Mr. Jeevan Prakash
Mr. Aditya Mondal ... For the Respondent.

The subject matter of this appeal is a property numbered as premises no. 33, Gariahat Road(South), Kolkata-700 031, measuring about 18,000 sq.ft.

The lease of this premises by the appellant in favour of the respondent dated 2nd January, 2012 was terminated by a notice dated 30th November, 2020. Along with the lease there was another agreement between the parties of the same date for display of advertisements/publicity materials collectively described as ‘signage’ on the outer wall of the said premises. In respect of the lease rent was payable, whereas for ‘signage’ facilities separate charges were payable by the respondent.

S.D.

According to Mr. Ghosh learned advocate for the appellant a sum of Rs. 6.46 crores is due and payable by the respondent to his client, although this figure is disputed by the learned advocate for the respondent. He also tried to put forward a counter claim for damages against the appellant.

We find on perusal of the impugned judgement and order of the court below that the only ground on which the application of the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 was dismissed was that according to the learned judge the dispute was not commercial in nature and that the said application had been wrongly filed in the commercial jurisdiction of that court.

We have examined the lease deed and the other agreement for the display of 'signage'.

Clause 'B' in the recital portion of the agreement at page 56 of the stay petition clearly states that the entire building was authorized by the Kolkata Municipal Corporation to be used for commercial purposes only.

Clause 6 of the lease deed makes it clear that the demised premises was to be used for the purpose of running and operating a hospital.

It is an admitted position that upon execution of the lease the respondent took possession of the premises and paid amounts towards both rent and the charges for 'signage' upto September, 2021.

Apart from the above point that the dispute is not commercial, learned advocate for the respondent also tried to take the point that the agreement for display of signage was not registered. Such being the position the agreement could not be relied upon, it was submitted. Hence, according to learned counsel no arbitration could take place in respect of disputes arising out of the lease deed and the 'signage' agreement.

As far as the first point is concerned, Section 2(c) (vii) of the Commercial Courts Act, 2015 defining commercial disputes, provides that commercial disputes include those arising out of "agreements relating to immovable property used exclusively in trade and commerce".

Now this definition of agreement does not classify or limit the type of agreements. The scope and width of this definition is wide enough, in our opinion to cover a lease agreement relating to an immovable property, where the property is used or intended to be used for commercial purposes and also collateral agreements like the 'signage agreement'. Any other interpretation of this definition would be absolutely absurd.

Hence, considering the above clauses in the lease deed and 'signage' agreement and the use of the premises, the disputes between the parties are commercial in nature.

As far as the second point is concerned there is no dispute that the lease deed is registered. It contains the arbitration clause. There is no dispute regarding it.

In our prima facie view registration of the lease agreement containing the arbitration clause is sufficient for the Arbitrator to assume jurisdiction. The validity of the signage agreement may be decided by the court or by the learned Arbitrator, if and when such dispute is raised.

In those circumstances we set aside the impugned judgement and order dated 9th September, 2021.

We remit the Section 9 application to the learned court below to be adjudicated on merits.

All points which have not been decided by us in this judgement and order are kept open before the court below.

The interim order granted by the learned court below and existing on the date of the impugned judgement and order shall continue subject to further orders being prayed for, until disposal of the application or until further orders whichever is earlier.

We appoint Mr. Rajarshi Raichoudhury, Advocate and member of Bar Association (M: 98748 79897) and Mr. Nilendu Bhattacharya, Advocate of Bar Library Club first floor, High Court as Joint Receivers at an initial remuneration of 1200 Gms each and a monthly remuneration of 1500 Gms each from June, 2022 to be shared equally by both the parties.

The respondent shall deposit Rs. 3 crores by 15th June, 2022 and another Rs. 3 crores by 15th August, 2022 with the Joint Receivers to the credit of the arbitration without prejudice to the rights and contention of the parties.

The Joint Receivers shall invest this amount in a term deposit with State Bank of India, Kolkata High Court special Branch, earning the highest rate of interest upon intimation to the parties.

In default of the respondent making the above deposit the appellant shall bring this fact to the notice of the learned court below. Upon ascertaining the factum of default the said court shall direct the Joint Receivers to take immediate possession of the demised premises.

The appeal (FMAT 564 of 2021) and the connected application CAN 1 of 2021 are disposed of by this order.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)