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Arb.O.P. (Com. Div.) No.589 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P. (Com.Div). No. 589 of 2022

M/s.Chennai Hospital Pvt. Ltd.,
Represented by its Director,
Mr.T.Kanagaraj,
Having registered office at
No. 7, (Old No. 6/1),
Vivekanandan Street,
Chetpet,
Chennai – 600 031.

...Petitioner

Vs.

M/s.Ellen Hospital,
Represented by its Director,
Dr. V.Ramachandran,
287, Sathy Main Road,
Coimbatore – 641 012.

... Respondent

PRAYER : This Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to

(i) appoint a Sole Arbitrator to hear and decide the Arbitral dispute between the Petitioner and the Respondent, arising out of the Lease Agreement dated 05.07.2017;



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(ii) direct the Respondent to pay costs.

WEB COPY For Petitioner : Mr.J.Kingsly Solomon

For Respondent : Mr. E.Om Prakash, Senior Counsel
for Mr. S.Manuraj

O R D E R

The present petition was filed for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. It is seen from the records that the respondent is the owner of the premises. The said premises was leased out to the petitioner by lease agreement dated 05.07.2017 . By virtue of the said lease, an advance amount was already paid. According to the petitioner, it is submitted that the respondent has not vacated the premises on 05.07.2017 and the premises was handed over to the petitioner only in the month of August 2017 and submitted that the work will be completed in two months and hence, the payment date was agreed to commence two months from 05.07.2017. However, it is submitted that the structural and building alterations were not carried out fully as promised by the respondent and the petitioner has carried



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out the reconstruction and repair work and the cost of the same have to be borne by the respondent as per clause 8.2 of the lease agreement. Further, it is submitted that the respondent has charged unfair lease amount. Therefore, they made a claim for around 13.57 Crores towards expenditure and excess rent. Apart from 13.57 Crores, they are entitled for compensation in total to the sum of Rs.26 crores.

3. The learned Senior Counsel for the respondent submits that the respondent is the owner of the property and the property was leased out and presently, the petitioner has vacated the premises. He further submitted that now the claim made by the petitioner is that they had made certain developments in the property for which they are not entitled for a compensation and disputed the same. On the other hand, the learned Senior Counsel for the respondent also states that only the petitioner is liable to pay around Rs. 3 Crore as arrears of rent.

4.The learned Senior Counsel further submitted that they had filed two Civil Suits viz., O.S.No.1232 of 2020 before the District Munsif Court,



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Coimbatore and O.S.No.451 of 2022 before the Principal District Munsif Court, Coimbatore and wherein they have obtained interim order in I.A.No.2 of 2020 in O.S.No.1232 of 2020 and in I.A.No.2 of 2022 in O.S.No.451 of 2022. The learned Senior Counsel further submitted that in the lease agreement dated 05.07.2017 clause 22 states about dispute resolution and the relevant portion is extracted as follows;

“22 (a).In case of any dispute arising or accruing in respect of this deed or upon matters incidental related or consequent hereto, the same shall be referred for Arbitration in consonance with the provisions of the Arbitration and Conciliation Act, 1996.”

5.The present dispute of the petitioner and the respondent squarely falls within the purview of the dispute that has arisen out of the lease agreement as per clause 22 (a) of the lease agreement. Both the Counsel submit that they are not able to arrive at any consensus to appoint a sole arbitrator and therefore, they have approached this Court. Both the learned counsel submitted that a retired High Court Judge may be appointed as a sole arbitrator. Both the parties agreed to conduct arbitration in the Arbitration



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Centre attached to this Court. Therefore, this Court feels it appropriate to pass the following order:

i)Hon'ble Mr.Justice K.Kalyana Sundaram(Rtd.), residing at Flat No.406, 5th South Cross Street, Kapaleaswarar Nagar, Neelankarai, Chennai, Contact No.93810 11077 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii)That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii)That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv)That the learned Sole Arbitrator appointed herein shall decide the matter on merits without being influenced or inhibited by any of the observations made in the order of this Court.”

6.The learned senior counsel appearing for the respondent submitted that until the commencement of the arbitration proceedings, the interim order



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granted by the lower Courts may be continued for which the learned counsel for the petitioner is also agreed.

7.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

15.12.2022

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

Copy to

Hon'ble Mr.Justice K.Kalyana Sundaram (Rtd.),
Flat No. 406, 5th South Cross Street,
Kapaleaswarar Nagar,Neelankarai,
Chennai,
Contact No.93810 11077.



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KRISHNAN RAMASAMY, J.

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