

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRESENT
THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

ARBITRATION APPLICATION NO: 37 OF 2021

Between:

M/s Hyderabad Aviation Academy and Hospitality Management, Rep. by its
Managing Partner Mohd Abdul Rauf, O/o 2-3-60/1, Near Sri Ramanz,
Theatre, Amberpet, Hyderabad. ... PETITIONER

AND

1. Mr. Ch. Anil Kumar S/o Ch. Hanumantha Rao, Age Major Occ: Business
2. Mrs. Ch. Chaitanya, W/o Ch. Anil Kumar, Age Major Occ Business
3. Mrs. B. Bharathi Devi, W/o B. Chander Rao, Age Major Occ Business.
4. Mr. Ch. Kondal Rao, S/o Ch. Rama Rao, Age Major Occ Business,
5. Mrs. Ch. Manga, W/o Not know to Applicant, Age Major Occ Business,
6. Mrs. K. Chandrika, W/o K. Surjeet Kumar, Age Major Occ Business, All are
R/o Villa No. 5-3-113. Kukatpally, Hyderabad-72.
7. Mrs. B. Vani, W/o B. Vinay Kumar, Age Major Occ Business.
8. Mrs. B. Sampoorna, W/o B. Harish Chander Rao, Age Major Occ Business.
- All are R/o 10-2-276/4/1, Nehru Nagar, West Marredpally, Sec-bad.
9. Mrs. B. Shravani, Age Major Occ Business.
- All R/o 1-5-1095/2, Mangapuram Colony, Alwal, Sec-bad.
10. Mrs. L. Vaishnavi, W/o L. Amit, Age Major Occ Business.
11. Mrs. B. Jahnavi, W/o Dr. D. Rohan, Age Major Occ Business R/o 1-3-96, Old
Alwal, Sec-bad. ...RESPONDENTS

Arbitration Application for request to appoint an arbitrator Under Section
11 (5) & (6) of the Arbitration and Conciliation Act 1996 R/w. Scheme for
appointment of Arbitrators, 2006 praying that this Hon'ble Court may be pleased
to i) Appoint a Sole Arbitrator to settle the issue/Dispute between the Petitioner

and the Respondents in terms of Lease Agreement dt. 15th October 2018, executed by the respondents in favour the petitioner ii) To award the costs of the application.

Counsel for the Petitioner: SRI. THOMAS LLOYD

Counsel for the Respondents : NONE APPEARED

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Arbitration Application No.37 of 2021

ORDER:

This Arbitration Application is filed under Section 11(5)&(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), for appointment of a sole Arbitrator to adjudicate the disputes between the parties arising out of the Lease Agreement dated 15.10.2018.

2. Despite service of notice on respondent Nos.1 to 8, none appears. Notice taken out on respondent No.9 has been returned with a postal endorsement "refused". In view of the settled legal position of law laid down by the Hon'ble Supreme Court in the case of **C.C.ALAVI HAJI V/s. PALAPETTY MUHAMMED AND ANOTHER¹**, it is deemed service. Notices taken out to respondent Nos.10 and 11 have been returned with postal endorsement "addressee left". Applicant submits that the said notices have been taken out at the addresses as mentioned in the Lease Deed and the same would amount to proper service of notice.

¹ (2007) 6 SCC 555

3. Applicant contends that it had entered into a lease agreement with the respondents dt.15.10.2018 for a period of two years. It is also contended that Clause 10.3 of the said agreement provides that, in the event of arising of disputes between the parties, the resolution of the same would be by reference to an arbitrator to be appointed by the consent of the parties to this agreement and to be conducted under the provisions of the Act and the arbitration is to be held at Hyderabad.

4. Applicant further contends that certain disputes have arisen between the parties and for resolving the same, the applicant had got issued a legal notice dt.05.10.2020, seeking resolution of the said disputes by invoking the arbitration clause and also nominated Sri Ch.Mohan, Advocate, as the sole arbitrator to adjudicate the disputes arising out of the lease agreement and called upon the respondents to give their consent for appointment of the sole arbitrator, within 30 days.

5. Applicant also contends that in reply to the said notice issued by it, the respondents through their counsel got issued a reply notice dt.24.10.1990, whereby, as against the claim made

by the applicant, the respondent's claim that the applicant is due certain sums to the respondents. Insofar as the invocation of arbitration clause is concerned, the respondents claim that since the dispute is arising subsequent to the applicant vacating the subject premises, on 30.10.2020, the question of applicability of arbitration clause as specified under the lease agreement would not arise.

6. I have noted the contentions of the respective parties and perused the record.

7. Having regard to the objection taken by the respondents as to the non-applicability of arbitration clause, in view of vacating the premises by the applicant, it is to be seen that as per the term of the lease deed, the lease was for a period of two years commencing from October, 2018 and would be valid till September, 2020, on which date the applicant has vacated the premises. Further, the arbitration clause as agreed between the parties specifies that any dispute arising between the parties regarding construction of the agreement or regarding rights and liabilities of either of the parties, shall be resolved by reference to an arbitrator and since the present dispute between the parties

relates to construction of the agreement entered into between the parties, this Court is of view that the said objection taken by the respondents is not a valid objection and it is accordingly rejected.

8. In view of the same, and having regard to the existence of arbitration clause in the lease agreement, this Court is of the view that the dispute raised by the applicant is required to be referred to arbitration to be conducted by a sole arbitrator.

9. Hence, I hereby appoint Sri S.V.V.Nath Reddy, a retired District Judge, Villa No.151, Maple Town Villas, Bandlaguda jagir, Near Glandile Academy, Hyderabad, to be the sole Arbitrator, who will adjudicate the disputes between the parties, as may be raised before him. The learned Arbitrator shall fix his own remuneration upon deliberation and consultation with the parties. He shall also estimate the cost and expenses for the secretarial assistance and other incidental expenditure of the arbitration proceedings. The parties will bear the expenses of the arbitration proceedings in equal share.

10. Accordingly, this application is allowed. No order as to costs.

11. Consequently, miscellaneous petitions pending, if any, shall stand closed.

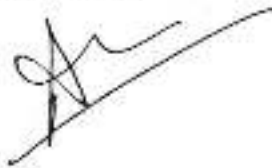
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SD/-M.SANTHI VARDHANI
JOINT REGISTRAR

SECTION OFFICER

To

1. Sri S.V.V. Nath Reddy, a retired District Judge, R/o. Villa No. 151, Maple Town Villas, Bandlaguda Jagir, Near Glandile Academy, Hyderabad. (by Special Messenger) (along with a copy of affidavit and material papers)
2. One CC to SRI. THOMAS LLOYD ,Advocate [OPUC]
3. Two CD Copies



HIGH COURT

DATED 21/06/2022

ORDER

ARB.APPL. No.37 of 2021



ALLOWING THE ARBITRATION

APPLICATION WITHOUT COSTS

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REMA
08/8/2022