

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.50 of 2022

1. M/s Mayasheel Retail India Ltd. having its registered office at 5709, Gali no. 6 Subhash Mohalla, Gandhi Nagar, New Delhi- 110031, India, represented through its Authorized Representative, Pintu Kumar, (M) aged- 38 years, Son of Vijay Yadav, Resident of Sudhi Tola, Mahendru, P.S.- Pirbahore, Dist- Patna.
2. Pintu Kumar, Son of Vijay Yadav, Resident of Sudhi Tola, Mahendru, P.S.- Pirbahore, Dist- Patna.

... .. Petitioner/s

Versus

M/s Alectra Infrastate Ltd. Through its Director Anil Kumar Singh, Son of Late N.P. Singh, Resident of New Colony, Dharampur, P.S.- Samastipur, District- Samastipur- 848101.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anuj Kumar Anshul, Advocate
For the Respondent/s	:	Mr. Suresh Pd. Singh No.1, Advocate
		Ms. Kumari Rashmi, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 12-04-2023

The Request made by the petitioner is under Section 11 of the Arbitration and Conciliation Act, 1996 ("A & C Act" hereinafter) for appointment of an independent and impartial Arbitrator to resolve disputes that arise between the parties, who have together entered into a Memorandum of Understanding/Lease Deed dated 07.04.2017, marked as Annexure- 1 to the petition. The petitioner asserted that it is a duly incorporated company registered under the Companies Act, 1956, engaged in the business of initiating, acquiring, setting up and establishing business centers, as is one of its



objectives, explicit in the Memorandum of Association. The petitioner further asserts that Annexure-1 was entered into with the respondent so as to establish a retail showroom of garments under the name and style of “Bazar India” at Samastipur; renting out the commercial property of the respondent situated at Ward No. 3 near Railway Gumti No. 84, Samastipur- 848101 (Bihar).

2. The respondent by Annexure- 1 demised the property, a commercial property of 8900 sq. ft. at the rate of Rs. 40/- per sq. ft. without serving a final measurement report. On the physical demise being made, it was falsely represented that the carpet area of the usable area is 7559 sq. ft.; based on which representation, monthly rent of Rs. 3,02,360/- as per Annexure-1 was collected. However, after the premises was occupied, on a measurement, the actual carpet area was found to be 7342 sq. ft. thus, entitling the petitioner to seek for recovery of the excess amount paid as monthly rent, for the differential area of 217 sq. ft.

3. Besides the above, as per Clause 10 of Annexure-1, the respondent had agreed to provide rent free parking area admeasuring 2000 sq. ft. in the basement of the building; which due to negligence and lack of maintenance



remained water logged throughout the year, thus making it totally unusable. Yet again, in violation of Clause 11 of Annexure-1, the respondent demolished the ladies wash room to build a lift passage for the personal use of the respondent. Further, two store air conditioners installed by the petitioner were forcefully uninstalled resulting in permanent damage to the compressor of the Server Room AC, leading to heavy losses to the petitioner. In violation of Clause- 11 of Annexure-1, the respondent also failed to provide fire fighting arrangement and NOC from the concerned department. Clause 16 of Annexure-1 required the respondent to provide sanctioned layout plan of the demised premises duly certified from the municipal authorities, enabling the demised premises fit for commercial use; which lay out plan was not supplied. There were several complaints raised of water leakage from the roof causing extensive damage to the fixtures and fittings in the store of the petitioner and the stock of retail items kept therein; all of which stood ignored by the respondent. Not only that the grievances of the lessee were ignored by the respondent lessor, but there was constant threat of disconnection of basic amenities and forceful eviction from the premises.

4. The petitioner being pushed to a corner, sent a



legal notice by Annexure-2 dated 26.11.21 invoking the arbitration clause raising the above mentioned disputes and suggesting four names, one of whom was to be appointed as the sole Arbitrator. This was despite the Arbitration Clause in Annexure-1 having conferred authority on the lessee to appoint a sole arbitrator; which could not have been objected to by the lessors. The said communication also remained unanswered in which context, the petitioner has approached this Court requesting appointment of an Arbitrator as per Clause 18 of the agreement.

5. The respondent filed a reply alleging and asserting that the 1st petitioner has no privity of contract with the respondent herein. Annexure-1 agreement was alleged to be entered into with one M/s Mayasheel Retail LLP, through its authorized partner who was not the named authorized representative of the 1st petitioner herein, impleaded as the 2nd petitioner. The respondent challenged the *locus standi* of the petitioner. The respondent also contended that it was incorrect to say that Annexure-2 notice was not replied to; which is responded to by Annexure- R/A. It was pointed out that by Annexure- R/A the respondent has raised a demand for the rent amounts kept in due as per the lease agreement. The various



allegations raised in Annexure- 2 notice was also specifically denied and controverted, and the two earlier notices sent by the respondent was also specifically referred to, which were also produced as Annexure- R/B series. The legal notices demanding lease rent kept due having not being responded to, on 20.09.2021, a further demand was made for Rs. 35 lacs, produced as Annexure R/C series. In fact, the specific contention raised by the respondent was that the notice for arbitration was only a retaliatory measure to somehow escape from paying the lease rent dues and having continued occupation of the premises, without satisfying the rent due. It was argued that the cause title to the application; indicating a totally different legal entity from the LLP who entered into the agreement, clearly indicated that there was subletting of the premises which is a clear violation of Clause 15 of the Lease Deed at Annexure-1. The respondent claims that there was no ground to initiate an arbitration proceedings and that, in any event, the petitioner being another legal entity, is not entitled to seek initiation of such proceedings.

6. This Court heard Shri Anuj Kumar Anshul, learned counsel for the petitioner and Shri Suresh Prasad Singh No. 1 and Kumari Rashmi, learned counsel for the respondents.



7. The petitioner's counsel specifically relied on the rejoinder filed by the respondent. It is pointed out that Annexure- 4 clearly indicated that the Limited Liability Partnership, in the name of Mayasheel Retail LLP was converted to a CMP and dissolved. The petitioner company by such reconstitution has stepped into the shoes of the LLP who was a party to the Agreement, Annexure-1. It is also pointed out that the respondent being quite aware of the conversion of the LLP to an incorporated Company had addressed Annexure-1 to the 1st petitioner herein. The respondent's counsel contended that the request made originally before this Court does not contain the above averments to support the initiation of proceedings by the 1st petitioner under the A&C Act and the authority to maintain the proceedings cannot be supplanted by a reply affidavit.

8. The Memorandum of Understanding at Annexure-A is for the purpose of lease, as has been described in the opening paragraph of this judgment. Clause 18 is the arbitration clause which speaks of resolution of difference of dispute arising amongst the parties on any of the terms and conditions contained in the Memorandum of Understanding; to be referred to a sole arbitrator appointed by the lessee, on which



appointment the lessor cannot raise any objection, the venue for such proceedings being agreed upon to be at Samastipur. It is by virtue of the said agreement that arbitration proceedings were initiated by the 1st petitioner, as seen from Annexure-2, but, however, suggesting four names, out of which the respondent was also given option to choose one. The only reasonable objection which could be considered in this application filed under Section 11(6) of the A&C Act is the challenge to the *locus standi* of the petitioner; which if found in favour of the petitioner the request has to be allowed.

9. Section 11 of the A & C Act deals with the appointment of arbitrators and sub-section (6) specifies that when a party fails to act according to the appointment procedure agreed upon by the parties or the two appointed arbitrators fail to reach an agreement expected of them under that procedure or a person/institution fails to perform any function entrusted to him/it under the procedure, then a party may request to the Supreme Court or the High Court to take necessary measure for appointment of an arbitrator. Section 2(h) specifically defines a party to be a party to an arbitration agreement and an arbitration agreement as is seen from Section 7 means an agreement by the parties to submit to arbitration all



or certain disputes, which have arisen or may arise between them in respect of a defined legal relationship.

10. From the reading of above provisions, it is crystal clear that an arbitration proceeding can be initiated only by a party to the agreement. In the present case, admittedly, the party to the agreement is a Limited Liability Partnership and the claim of the respondent is that the said LLP has been dissolved and the Limited Company, who is the petitioner herein, has stepped into the shoes of the LLP. The learned counsel also relies on Annexure-4 produced along with the reply affidavit which is the Company Master Data; the authenticity of which and the portal from which such extraction has been made, is not specified. Hence no reliance can be placed on the said document. It is also not evident from Annexure-4 that it is the applicant herein who has stepped into the shoes of the LLP after the LLP was dissolved. The petitioner also does not have a contention of any intimation having been given of the LLP having been dissolved and the Limited Company, the petitioner herein, having taken over its assets and liabilities; thus also subrogating itself as lessee in possession of the leased premises, as per the specific agreement by which the premises were demised in favour of the LLP.



11. The further contention taken by the learned counsel for the applicant is that Annexure-R/A issued by the respondent was specifically in the name of the petitioner Company. But this is a reply to the legal notice issued by the petitioner herein. In the above circumstances, I am of the view that the petitioner has failed to establish with the materials on record that the petitioner herein has stepped into the shoes of the LLP who is the party to the agreement produced as Annexure-1 to the petition.

12. The Request Case hence stands rejected, but, however, leaving the remedy open to be invoked with substantiating materials.

(K. Vinod Chandran, CJ)

P.K.P./Anushka

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20.04.2023
Transmission Date	

