

OD - 6

AP/127/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

EMAMI FOUNDATION

-Versus-

R.G. SCIENTIFIC ENTERPRISES
PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 13th April, 2023

Appearance :
Mrs. Pubali Sinha Choudhury, Adv.
Mr. Satwik Beriwal, Adv.
...for the petitioner.

Mr. Srijib Chakrabarty, Adv.
Mr. Jeevan Prakash, Adv.
Mr. Aditya Mondal, Adv.
Mr. Deeptangshu Kar, Adv.
...for the respondent.

The Court : The petitioner seeks a reference under Section 11 of the Arbitration and Conciliation Act, 1996 since no agreement has been reached between the parties as regards reference to arbitration.

The invocation notice is annexed to the present petition and it is clear from the same that more than 30 days have elapsed after issuance of the same.

Learned Counsel for the petitioner places reliance on the respective arbitration clauses in two agreements executed between the parties, a lease deed and a signage agreement, to show that both the said agreements contemplate arbitration in cases of disputes and differences regarding the same between the parties.

Learned Counsel appearing for the respondent opposes the reference to arbitration, as sought by the petitioner, on several grounds. First, it is submitted that the issue as to whether eviction disputes are arbitrable is now pending reference before a larger Bench of the Supreme Court. However, subsequently such point is not pressed by counsel in view of the Supreme Court having decided such reference in the meantime.

Learned Counsel for the respondent secondly argues that the signage agreement, which is also an independent agreement from the lease agreement, is unregistered. As such, since the amount payable by the respondent under the signage agreement is much more than that under the lease deed, the alleged dispute primarily relates to the signage agreement. Since such agreement is unstamped and unregistered as per the law, it is contended that the matter may not be referred to arbitration on the basis of such document.

That apart, learned Counsel appearing for the respondent seeks to use an affidavit-in-opposition to produce certain correspondence and related documents. However, since such correspondence evidently pertains to the merits of the dispute between the parties, as indicated by learned Counsel for the respondent, as they pertain to alleged payments being made between the parties, this Court finds no necessity to direct affidavits at this premature stage of deciding the application under Section 11, more so keeping in view of the provisions of sub-Section (6A) of Section 11 of the 1996 Act.

After arguments were substantially advanced, learned counsel for the respondent expresses intention for mediation to be explored as a mode of resolution of the dispute between the parties. However, such submission, after the court heard both sides and length and expressed its prima facie opinion, appears to be only a handle for further delaying the hearing and, hence, is refused. In any event, the parties may reconcile the issues between themselves or before the arbitrator at any time.

Upon hearing learned Counsel for the parties, it transpires that the cardinal point agitated by the respondent to oppose reference to arbitration is that the unregistered signage agreement cannot be the basis of a reference to arbitration.

A comprehensive prima facie perusal of the agreements in question clearly indicates that the signage agreement is merely part and parcel of the lease agreement. It is indicated as much in the signage agreement itself in so far as Clause 2.2 thereof stipulates that the agreement shall remain co-extensive and co-terminal with the lease deed. That apart, it has been clearly indicated in other portions of the signage agreement as well that the same was being entered into merely for the beneficial use and enjoyment of the premise which has been demised in terms of the lease agreement.

That apart, it is somewhat arguable as to whether a signage agreement *per se* is required to be compulsorily registered under the law. However, it would be premature to decide on such issue at this juncture since it is well-settled that it is for the Arbitrator, if the matter is referred to arbitration, to decide all issues, including those of maintainability.

However, as indicated above, on a prima facie reading of the agreements, it does not transpire that the fact of the signage agreement itself being unregistered can be a deterrent in law for the matter to be referred under Section 11 of the 1996 Act.

Inasmuch as the other contentions are concerned, there is no scope for going into the merits of the respective

contentions of the parties. It will be for the Arbitrator, when appointed, to decide on all the issues in accordance with law.

As evident from the above discussions, there cannot be any impediment, in view of the lack of agreement between the parties regarding appointment of Arbitrator, to refer the matter to arbitration under Section 11 of the 1996 Act. Accordingly, AP No.127 of 2023 is allowed, thereby appointing Justice Aloke Chakrabarty, a former Judge of this Court, residing at Uniworld City Horizons, Tower 4, Flat No.-203, New Town, Kolkata- 700 135 (Mobile No. - 9831644202), as the Sole Arbitrator to resolve the disputes between the parties, subject to obtaining declaration/consent from him under Section 12 of the 1996 Act.

(SABYASACHI BHATTACHARYYA, J.)