



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.99 OF 2023

Bharti Airtel Ltd.

...Petitioner

Versus

Citi Solution Warehousing and Distribution Pvt.
Ltd.

...Respondents

Mr. Rahul Gaikwad a/w Ms. Nikita Abhyankar a/w Ms. Garima
Joshi i/b Gravitas Legal for the Applicant.
None for the Respondents.

CORAM Dr. Neela Gokhale, J.
DATED: 3rd October 2023

PC:-

1. The Petitioner seeks appointment of arbitrator to resolve the dispute that has arisen out of leave and licence agreement dated 29th November 2018 in terms of Clause 36 of the said agreement.

2. Notice was issued to Respondent by this Court. By order dated 26th June 2023, this Court had directed that if the Respondent despite being served, failed to remain present on the next date, the Arbitration Petition will be heard in the absence of the Respondent. The matter was listed on number of occasions, but the Respondent failed to appear in the matter. Even today, neither the Respondent

nor his Counsel is present before the Court when the matter is called out.

3. I have proceeded to hear the Counsel for the Petitioner.

4. According to Mr. Gaikwad, the learned Counsel for the Petitioner the parties entered into a leave and licence agreement dated 29th November 2018 and pursuant to the said agreement, the licensee deposited with the licensor an amount of Rs.55,50,000/- as interest free refundable security deposit which was agreed to be returned to the Petitioner upon handing over vacant and peaceful possession of the licensed premises or upon termination of the agreement whichever is earlier. The agreement ceased to exist with effect from 31st December 2021 and the licensee, i.e., the Petitioner handed over vacant and peaceful possession of the premises to the Respondent on the same date. However, it is the say of the Petitioner that the licensor, i.e., is the Respondent failed to refund the interest free refundable security deposit to the Petitioner as per the agreement.

5. In these circumstances, the dispute arose and a demand notice was issued to the Respondent on 29th June 2022. The Respondent failed to make that payment and ultimately, the Petitioner invoked the arbitration clause by notice dated 13th August 2022. The said notice was returned to the Petitioner with remark 'addressee left'. Thus the Petitioner also sent an email dated 24th August 2022 to the officials of the Respondent. Despite the attempts of the Petitioner to serve the Respondent with the invocation notice, the notices were not served on account of

Respondent being absent at the said address. The Petitioner, thus, filed the present present Petition, seeking appointment of an arbitrator to resolve the dispute.

6. Even today, neither the Respondent nor his Counsel is present before the Court. No affidavit in reply is filed by the Respondent. The Petitioner has placed on record details to show that the Petitioner has notified the date of listing of the matter to the Respondent from time to time. The Petitioner undertakes to file the relevant emails within a period of one week from today supported by an affidavit.

7. In these circumstances, I proceed to hear the Petition and pass the following order:

ORDER

1. Ms. Aarti Sathe, Advocate is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties out of the Leave and License Agreement dated 29th November 2018. The seat of the arbitration shall be Mumbai.
2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.
3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the

date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.

4. All contentions of the parties on merits of the disputes are expressly left open.
5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
6. The Petition is disposed of in the above terms. There will be no order as to costs.
7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

**"Ms. Aarti Sathe, Advocate,
5B, 6A, Buona Casa, Sir PM Road,
2nd Floor, Opp: Kashmir Govt. Arts Emporium,
Diagonally Opp: French Bank Bldg., Fort,
Mumbai- 400 001
Mobile No.9820544063
E-mail Address: aartisathe19@gmail.com"**

(Dr. Neela Gokhale, J)