

K.S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.10 OF 2023

Ashish Singh & Ors.,

...Petitioners

Versus

Wantstats Research and Media Pvt. Ltd.,

...Respondent

Mr. Anukul Seth a/w Aditya Mokashi, Advocates for Petitioners.

Mr. Viraj V. Kadam a/w Mr. Gopal Purab and Rukhsar Ansari,
Advocates for Respondent.

CORAM : R.I. CHAGLA, J.

DATE : 3RD AUGUST, 2023.

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking appointment of Sole Arbitrator to enter into a reference and adjudicate the dispute and difference between the parties as per Clause 20 of Leave & License Agreement dated 19th January, 2021.

2. Having perused Clause 20 of Leave & License Agreement dated 19th January, 2021, there is an Arbitration Agreement between

KAVITA
SUSHIL
JADHAV

Digitally signed
by KAVITA
SUSHIL JADHAV
Date: 2023.08.11
18:43:22 +0530

the erstwhile licensor / owner City Realty & Development Private Limited and the present Respondent as Licensee, under Clause 17 of the said Leave & License Agreement. There is a mention of a new Licensor or new owner which in the present case is the Petitioner who is required to issue a letter in favour of the Licensee confirming that the terms contained in the said Leave & License Agreement shall be binding on the Licensor / new owner. Further, the Licensor / new owner shall communicate the receipt of interest free deposit paid by the Licensee to the Licensor. Thereupon the benefits and obligations shall be transferred to the new owner and all adjustments shall be made accordingly and that in any event, the licensor herein shall extend full co-operation to the Licensee. There is further mention in the said Clause 17 that subject to what is stated in the said Clause, the Licensor shall have right to assign / transfer the suit premises or rights, interest and obligations under Leave & License Agreement to any other person without prejudicely affecting the rights and obligations to the Licensee under the Leave & License Agreement, without prior consent of the Licensee.

3. The Petitioner's case is that they are the Assignee of the Leave & License Agreement from the erstwhile Licensor and that the

Arbitration Agreement will apply to the Petitioner under the said Clause 20 read with Clause 17 of the Leave & License Agreement.

4. The learned Counsel appearing for the Petitioner has relied upon the decision of the learned Single Judge of this Court in **DLF Power Limited Vs. Mangalore Refinery & Petrochemicals Limited**¹ in support of his contention that the Assignee to a contract having an Arbitration Agreement which forms part of the said contract, the Arbitration Agreement will be applicable to the Assignee as he steps into shoes of the Assignor and thus entitled to all rights, obligations and benefits under the original contract.

5. The learned Counsel for the Petitioner further submitted that the Respondent had all times acknowledged the Licensor as having stepped into the shoes of the erstwhile Licensor and acted in such capacity. He is now estopped from contending otherwise.

6. The learned Counsel for the Respondent has placed reliance upon Section 55 of the Maharashtra Rent Control Act, 1999 which has a non obstante clause and provides that any agreement for leave and license or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the

¹ **2016 SCC Online Bom 5069**

commencement of the said Act, shall be in writing and shall be registered under the Registration Act, 1908.

7. The learned Counsel for the Respondent has submitted that admittedly there is no agreement between the Petitioner and Respondent as Licensor and Licensee which is in writing and registered under the Registration Act, 1908. He has further submitted that Clause 20 read with Clause 17 of the Leave & License Agreement cannot give a go by to the statutory provision under the Maharashtra Rent Control Act. He has submitted that presuming these clauses in the Agreement are applicable to the Licensor / new owner, there is non compliance of Clause 17 of the Leave & License Agreement as the Petitioner claiming to be the new owner, has not issued the requisite letter in favour of the Licensee confirming that the terms contained in the original Leave & License Agreement shall be binding on the Licensor / new owner. Thus, in no circumstance will the Arbitration Agreement be applicable to the Petitioner and that the relief sought for in the Arbitration Petition cannot be granted.

8. Having considered the submissions in my view there is much merit in the submissions on behalf of the Respondent. A Leave

& License Agreement is treated differently from any other contract by the Maharashtra Rent Control Act, 1999. Under the said Section 55(1) of Maharashtra and Rent Control Act, it provides as under :

“Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908.”

9. Thus, from this provision of the said Act, there can be no Leave & License between the landlord and tenant or Licensee as the case may be, after the enactment of the said Act unless there is an agreement in writing and registered under the Registration Act, 1908. In the present case, there is no such agreement in writing between the Petitioner and Respondent as Licensor and Licensee. Hence, there being no Arbitration Agreement, the disputes cannot be referred to Arbitrator.

10. Further, Clause 20 of the original Leave & License Agreement, though providing for arbitration, the parties to the Arbitration Agreement are the erstwhile Licensor and the Respondent as Licensee. The Arbitration Agreement cannot apply to the Petitioner, presuming that it is accepted that the Petitioner is the new owner in respect of the said premises.

11. Under Clause 17 of the original Leave & License Agreement a letter is required to be issued by the new owner in favour of the Licensee confirming that the terms contained in the said Leave & License Agreement is binding on the new owner. Such letter has never been issued by the Petitioner. Thus, this mandatory condition in Clause 17 of the Leave & License Agreement has not been complied with. This is presuming that the original Leave & License Agreement can at all apply to the new owner.

12. The decision relied upon by the learned Counsel for the Petitioner viz. ***DLF Power Limited Vs. Mangalore Refinery & Petrochemicals Limited (supra)*** in support of his contentions that the Assignee steps into the shoes of the Assignor and that the original contract containing Arbitration Agreement will be assigned to the Assignee has no application when the contract is a Leave & License

Agreement. In that case, the subject contract was for civil works for carrying out erection of a power plant equipment.

13. In the present case, the contract is a Leave & License Agreement and thus will have to confirm with the rigors of the Maharashtra Rent Control Act, 1999 and in particular Section 55 thereof. Thus, there is no merit in the case made out on behalf of the Petitioner for reference of the dispute between the Petitioner and Respondent to Arbitration.

14. The relief sought for in the Arbitration Petition is not granted. The Arbitration Petition is accordingly disposed of.

15. There shall be no orders as to costs.

[R.I. CHAGLA, J.]