



WEB COPY



Arb.O.P(Com.Div.)No.422 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.422 of 2023

Sunshine Teahouse Private Limited,
Represented by Kapil Malhotra

... Petitioner

Vs.

Bhuvaneshwari

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation Act, 2019, praying to appoint an Arbitrator in terms of the Lease Agreement dated 26.12.2022 entered into between the petitioner and the respondent for the purpose of adjudicating upon the disputes that have arisen between the petitioner and the respondent and to award costs of the present proceeding to the petitioner.

For Petitioner : Mr.Bhagavath Krishnan

For Respondent : Mr.M.Saravanakumar

ORDER

The petitioner has filed this petition under Section 11(6) read with Section 15(2) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation Act, 2019, to appoint an Arbitrator in terms of the



Lease Agreement dated 26.12.2022 entered into between the petitioner and the respondent for the purpose of adjudicating upon the disputes that have arisen between the petitioner and the respondent and to award costs of the present proceeding to the petitioner.

2. The petitioner appears to have leased out the premises of the respondent for setting up a Coffee Shop under a Lease Agreement dated 26.12.2022. The Lease Agreement contemplates an Article for resolution of dispute through arbitration. Article 14 confers jurisdiction of Courts in Chennai. Under Article 15, the parties have agreed for resolution of dispute through arbitration fixing the venue at New Delhi.

3. It is the case of the petitioner that the petitioner has advanced a sum of Rs.11,20,000/- as refundable security deposit and had over spent a sum of Rs.25,90,327/-. However, the respondent had objected to fixation of the Signage Board, which led to dispute between them resulting in termination of the Agreement dated 23.05.2023.

4. The learned counsel for the petitioner further has drawn attention to a notice dated 14.06.2023 issued under Section 21 of the Arbitration and



Conciliation Act, 1996 asking the respondent to consent for appointment of one of three of the Advocates named therein as one of the Arbitrator for resolving the dispute in terms of Article 15 of the Lease Agreement dated 26.12.2022.

5. The learned counsel for the respondent objects by stating that there is no arbitrable dispute subsisting between the parties as on date. He would draw attention to the notice terminating the lease on 23.05.2023 wherein, the petitioner itself called upon the respondent to come forward to take possession of the lease premises.

6. That apart, the learned counsel for the respondent would submit that two suits have been instituted by the respondent before the District Munsif Court, Alandur in O.S.No.310 of 2023 and before the Additional District Court, Chengalpet in O.S.No.394 of 2023 and therefore on this count also there is no scope for resolving the dispute between the parties through arbitration.

7. The learned counsel for the petitioner submits that both the suits have been instituted after Section 21 notice was issued invoking arbitration clause. The learned counsel for the petitioner further submits that although no summons has been received by the petitioner, the petitioner came to know about



pendency of the suits only in the counter affidavit filed by the respondent in this proceedings.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have perused the contentions of the registered Lease Deed dated 26.12.2022.

9. The said Lease Deed contains an arbitration clause for resolution of dispute. It reads as under:-

"Article 15 : Dispute Resolution:

The Parties herein shall resolve all disputes in connection with this Agreement amicably by mutual negotiation, failing which, the Parties herein shall refer the dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996, with its statutory modifications, enactments or re-enactments thereto, there shall be a single arbitrator to be appointed by the mutual consent of both the Parties. The venue of arbitration shall be New Delhi. The language of Arbitration shall be English. The award of Arbitrator shall be final and binding on the Parties. The expenses of the arbitration proceedings shall be borne equally between the Parties."

10. I am therefore of the view that the dispute is arbitrable and therefore the parties can be relegated before an Arbitral Tribunal notwithstanding the fact that the respondent has filed O.S.No.310 of 2023 before the District Munsif



Arb.O.P(Com.Div.)No.422 of 2023

Court, Alandur and has filed O.S.No.394 of 2023 before the Additional District Court, Chengalpet.

11. The respondent having failed to consent for appointment of an Arbitrator has forfeited the rights under the Lease Deed.

12. It is open for the petitioner to file appropriate application under Section 8 of the Arbitration and Conciliation Act, 1996 or to move appropriate application for rejection of the plaints in the respective suits. However, there cannot be any impediment for appointing an Arbitrator to resolve the dispute as the parties have specifically agreed for resolving the dispute through arbitration.

13. Though the parties have agreed for venue of Arbitration as New Delhi, Court is inclined to appoint **Mr.R.Singaravelan, Senior Advocate, Enrollment No.4/1985 dated 04.09.1985 (Mobile No.9677185695) having Office at No.64/108, 1st Floor, Catholic Centre, Armenian Street, Chennai - 600 001** as the sole arbitrator to enter upon reference to resolve the *inter se* dispute between the parties.



WEB COPY

14. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

15. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

16. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.



Arb.O.P(Com.Div.)No.422 of 2023

WEB COPY

17. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

30.11.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

arb



WEB COPY



Arb.O.P(Com.Div.)No.422 of 2023

C.SARAVANAN, J.

arb

Arb.O.P.(Comm.Div).No.422 of 2023

30.11.2023