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Arb.O.P (Com.Div.) No.517 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.517 of 2023

1. Ms.Shankari

2. Mr.Mani V.Iyer

... Petitioners

Vs.

Mr.M.N.Varadharajan

...Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a neutral Arbitrator and pass further orders.

For Petitioners : Mr.K.S.Karthik Raja

For Respondent : Mr.P.Suresh Babu



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ORDER

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2. This Court, vide order dated 29.01.2024 has appointed Mr.N.Sridhar, Advocate as Mediator to resolve the dispute between the parties. Since, the matter could not be settled between the parties, the matter has been sent back to this Court and listed today.

3. Today, when the matter is taken up for hearing, Mediation Report dated 25.04.2024 has been filed, wherein the learned mediator has stated that despite efforts being made, the matter could not be settled between the parties.

4. The learned counsel for the Petitioners would submit that the Petitioners and the Respondent have entered into a deed of Leave and Licence dated 23.07.2014 and as per the terms of said Leave and Licence, the Petitioners have paid a sum of Rs.21,00,000/- (Rupees Twenty One



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Lakhs only) and the Respondent has agreed to repay the caution deposit given by the Petitioners upon the Licence for occupation in respect of the property being granted to the third party or 6 months from the date of termination, whichever is earlier. He further submitted that because of unholy atmosphere and the poor services/facilities provided by the Respondent, the Petitioners were forced to terminate the Deed of Leave and Licence on 01.08.2019 and even prior to termination, the Petitioners have vacated the premises on 31.07.2019 and they are ready to hand over possession. But the Respondent with an ulterior motive, has refused to return the Security Deposit paid by the Petitioners. Despite several requests being made by the Petitioners, the respondent had not made any payment to the Petitioners. Therefore, the Petitioners have addressed a communication to the Chief Secretary, Commissioner and Welfare Department of Non Resident Tamilians, Chennai and District Collector, Coimbatore, but in spite of directions and instructions issued by the said authorities also, the Respondent has not chosen to make any payment to the Petitioners and therefore, the Petitioners were constrained to send legal notice to the Respondent on 31.03.2022 and even then also, the Respondent has not made



any payment to the Petitioners. Hence, a notice was sent to the respondent on 01.07.2022, through the Petitioners' counsel suggesting the names of three retired District Judges to act as Arbitrators, for which, the Respondent sent a reply by way of E-mail through his counsel, refusing to accept the arbitrators suggested by the Petitioners and hence the present petition came to be filed.

5. Further, the learned counsel for the Petitioners would submit that the present dispute is arising out of the Leave and Licence Deed dated 23.07.2014 and the same can be arbitrable in terms of Clause 9 of the said agreement, which reads as follows:

“9.In case of any dispute inter-se between the parties hereto either during the continuation of the licence or dispute arising subsequent to the termination, the same shall be subject to arbitration and be referred to a sole arbitrator of the rank of a retired district judge in accordance to the Arbitration and Conciliation Act 1996 and the place of arbitration shall be in Coimbatore only.”



By referring to the said clause, he would submit that the present dispute may be referred to Arbitration.

6. The learned counsel appearing for the Respondent submitted that 'M/s.Tapovan Senior Citizens Complex' is also a necessary party to this proceedings and hence they may be impleaded as a party in this Petition.

7. Heard the learned counsel for the Petitioners and the Respondent and also perused the materials available on record.

8. In view of the above, it is clear that the present dispute is arising out of the Leave and Licence Deed dated 23.07.2014 and the same is arbitrable under Clause 9 of the said Deed. Hence, this Court is inclined to appoint a sole Arbitrator.

9. Accordingly, this Court feels it appropriate to pass the following order:



i) Mr.Thriyambak J.Kannan, Advocate, No.119/65, 1st Floor, Dr.Radhakrishnan Salai, Mylapore, Chennai - 600 004, Mobile No.98846 24563, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

10. Insofar as the submission made by the learned counsel for the Respondent that 'M/s.Tapovan Senior Citizens Complex', is a necessary party, a perusal of the Leave and Licence Deed would go to show that there



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is some obligation on the part of 'M/s.Tapovan Senior Citizens Complex' and therefore liberty is granted to the Respondent to file appropriate application before learned Arbitrator for impleading the said party and the learned Arbitrator shall consider the same and pass orders on merits and in accordance with law.

11. With the above directions, this Arbitration Original Petition is allowed.

25.04.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
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KRISHNAN RAMASAMY.J.,
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