

IN THE HIGH COURT AT CALCUTTA
(Commercial Division)
ORIGINAL SIDE

Present: Hon'ble Justice Shampa Sarkar

AP-COM/926 of 2024
Pawan Prahladka
Vs.
Sri Guru Singh Sabha & Ors.

For the petitioners : Mr. Ishaan Saha, Adv.
Mr. Karanjeet Sharma, Adv.
....for petitioner

Hearing concluded on: 20.01.2025
Judgment on: 26.02.2025

Shampa Sarkar, J.:-

1. This is an application for appointment of an arbitral tribunal in terms of clause 26 of the agreement dated June 13, 2023. The petitioner and the respondents entered into the said agreement for lease of a covered air-conditioned banquet hall comprising of an area of 6000 square feet with open concrete lawn along with structures and outhouses situated at premises number 22, Gorcha, 2nd lane, Kolkata 700019 known as Punjab House.

2. The respondent No.1 is a trust and the other respondents are the trustees. The respondent Nos. 1 to 4 were served with the application and the notice of motion, but service in respect of the respondent Nos. 5 and 6 were not satisfactory.

3. By order dated January 2, 2025, this court directed substituted service by way of paper publication. Insertions in two widely circulated newspapers, one in English and one in Hindi was directed to be made by the petitioner. The petitioner complied with the order and on January 20, 2025, the matter was taken up once again when the affidavit of service along with the copies of the newspapers, namely the 'Business Standard' and the 'Dainik Vishwamitra' were produced in court. Despite such service, none appeared on behalf of the respondents and the court proceeded to hear the matter in their absence.

4. The dispute arose out of an unregistered deed of lease dated June 13, 2023, and the supplementary agreement of the same date entered into between the parties. In terms of the above unregistered deeds, the respondents had certain obligations.

5. The supplementary deed, which was in furtherance of the deed of lease, was entered into on the same day and a further agreement was reached between the parties with regard to special privileges in respect of bookings, social functions, etc., to be hosted by a member of Sikh community.

6. The petitioner contended that the lessor had agreed to grant the lease to the petitioner for use of the said property along with all appurtenant land, with fittings, fixtures, machinery, furniture, equipment, etc., to carry on the business under the name and style of 'Pawan Caterers'. The agreement was for a period of 11 months, commencing from October 1, 2023 and expiring on August 31, 2024, subject to the option on the part of the lessee for renewal of the said lease by a further period of 11 months.

7. According to the terms and conditions of the lease, the total amount payable was Rs. 82,50,000/-. A sum of Rs.15,00,000/- was to be paid on the date of execution and another sum of Rs. 12,50,000 was to be paid on the date of commencement of the period of 11 months, i.e., on October 1, 2023. The lessee was required to pay the balance sum of Rs.55,00,000/- in four instalments during the period of lease, that is, Rs. 15,00,000/- in four instalments, i.e., Rs. 15,00,000/- at the end of every quarter for the first three quarters and Rs.10,00,000/- at the end of the period of 11 months. The lessee was required to arrange for housekeeping staff and decorate the place at its own cost. The lessee was also entitled to construct temporary structures with air conditioning and such other amenities at his own cost.

8. However, the lessor was required to provide requisite supply of electricity, bear electricity charges, install soundproof generators, maintain and provide proper upkeep of all electrical lines, provide security at both the gates in the front and at the back, ensure all fire safety measures, make arrangements so that there was no echo inside the banquet hall, etc. The lessor was also required to cover the kitchen area and extra spaces which were lying open. The lessee had the right to manage all social functions with the use of sound speakers till 10 p.m. and not beyond. According to the petitioner, the second agreement which has been referred to as the supplementary agreement, was entered into on the same day in furtherance of the agreement dated June 13, 2023. In terms of the second agreement, the privileges given to the Sikh community and the charges payable by them, mode and manner of bookings, etc., were agreed upon.

9. It was urged that the deed of lease and the supplementary agreement formed a part of a single composite agreement and they were co-terminus in nature. The dispute resolution clause would cover both the agreement. It was urged that in terms of the lease deed, the petitioner transferred the sum of Rs. 15,00,000/- in favour of the respondent, simultaneously with the execution of the deed. The petitioner was inducted into the property on October 1, 2023, but the respondent retained a set of keys to the said property and had regular access to the property. The petitioner accordingly started the business from the said property and started operating and managing the banquet hall in due discharge of his obligations under the agreement. However, the petitioner encountered some hindrances from the side of the respondents, who had failed to discharge their obligations under the agreements.

10. The respondents were unilaterally proceeding to take bookings for the banquet hall without information to the petitioner. The petitioner alleged that the respondents did not allow construction of the temporary structure; they failed to provide requisite security at the entry point. They failed to provide adequate car parking for 90 cars, which led to a chaotic situation. Uninterrupted electricity supply was not available. The electricity load provided was often inadequate, installation of soundproof generator, implementation fire safety measures, soundproofing of the banquet hall, covering of the kitchen and extra space, etc. were not carried out. All such failures on the part of the respondents were a breach of the terms and conditions of the deed of lease and the supplementary agreement. Therefore, according to the petitioner disputes arose on account of such issues. The

petitioner, by a letter dated June 11, 2024 issued a notice for specific performance of the lease agreement dated June 13, 2023. It was urged that the respondents did not pay any heed to the above mentioned notice demanding compliance and specific performance of the terms and conditions of the lease deed and finding no other alternatives, the petitioner, through a learned advocate, issued a notice dated September 7, 2024 for appointment of an arbitrator as per clauses 26 and 27 of the lease agreement dated June 13, 2023. The petitioner also nominated Mr. Domingo Gomes, Advocate, Ball Library Club, 2nd Floor, High Court as their arbitrator.

11. When the disputes remains unresolved, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, before the Judge, Commercial Court at Alipore and upon being, prima facie satisfied with the submissions of the petitioner, a protective order was extended by the learned court in terms of the prayer (a), (b) and (c) of the said application before the court. The respondents were restrained by an ad-interim order from creating any third party interest in respect of the property.

12. From the notices issued by the petitioner, including the notice invoking arbitration, it appears that the petitioner's allegations are that the respondents failed to discharge their obligations of the lease agreement as also the supplementary agreement.

13. Admittedly, the supplementary agreement was entered into in furtherance of the agreement for lease dated June 13, 2023, which contained further terms and conditions. The reference to the agreement of

June 13, 2023 is available in the supplementary agreement. Thus, disputes arising out of both these agreements are to be settled by one composite reference to arbitration. The arbitration clause will apply to the supplementary agreement as well. Some portions of the decisions of the Hon'ble Apex Court ***Giriraj Garg vs. Coal India Ltd. and Ors.*** reported in ***(2019) 5 SCC 192***, are quoted below:-

“5.10. In the 1996 Act, the doctrine of incorporation by reference is provided in the statute itself under Section 7(5) of the Act. In *M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.* [*M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.*, (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271 : (2009) 3 Arb LR 1 : (2009) 9 Scale 298] this Court held that even though a contract between the parties did not contain a provision for arbitration, an arbitration clause contained in an independent document would be incorporated into the contract by reference, if the reference is such as to make the arbitration clause a part of the contract. The Court explained the doctrine of incorporation in the following words: (SCC p. 707, para 24)

‘24. The scope and intent of Section 7(5) may therefore be summarised thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:

(1) the contract should contain a clear reference to the documents containing arbitration clause,

(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the

referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms & conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties.”

(emphasis supplied)

7.1. The arbitration clause in the 2007 Scheme clearly states that :

“All disputes arising out of this scheme or in relation thereto in any form whatsoever shall be dealt exclusively by way of arbitration in terms of the Arbitration and Conciliation Act, 1996.”

(emphasis supplied)

Russell in his commentary on arbitration [Russell on Arbitration (24th Edn., 2015, Sweet & Maxwell) p. 82, Paras 2-103.] has interpreted these words as follows:

“Disputes “in connection with”, “in relation to”, or “regarding” a contract. These words, which are frequently encountered and are to be given the same meaning, were at one time given a restricted interpretation, but are now well established as having a broad meaning ... They may also be sufficient to catch disputes arising under another contract related to the contract containing the arbitration clause.”

(emphasis supplied)

7.2. In *Renusagar Power Co. Ltd. v. General Electric Co.* [Renusagar Power Co. Ltd. v. General Electric Co., (1984) 4 SCC 679 : (1985) 1 SCR 432] this Court observed that expressions such as “arising out of”, or “in respect of”, or “in connection with”, or “in relation to”, the contract are of the widest amplitude, and content. In *Doypack Systems (P) Ltd. v. Union of India* [Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299 : (1988) 36 ELT 201] this Court observed that expressions such as — “pertaining to”, “in relation to” and “arising out of”, are used in the expansive sense, and must be construed accordingly.

7.3. The words “in relation thereto” used in Clause 11.12 of the 2007 Scheme indicate that the clause would apply to all transactions which took place under the 2007 Scheme. This would include the sale transactions in the present case.”

14. The allegations against the respondent and the alleged breach committed by the respondent, inter alia, deal with failure to comply with clauses 6 to 13 of the lease agreement and clauses B to E of the supplementary agreement. The arbitration clause and the jurisdiction clause are set out here under:-

“26. Any dispute or difference between the parties hereto relating to and / or concerning the Said Demised Unit or any portion thereof and/or arising out of and/or relating to and/or concerning this Agreement or any term or condition herein contained and/or any breach thereof and/or relating to interpretation thereof shall be

referred to arbitration to 3 (three) Arbitrators. The Licensors jointly shall appoint one Arbitrator and the Licensee shall appoint another Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator within 30 days of appointment of the last of the said two Arbitrators. The arbitration shall be held at Kolkata in accordance with the Arbitration and Conciliation Act, 1996 as amended from time to time. The parties have agreed that the Arbitrators shall have summary powers and may make or give interim orders, awards and/or directions and shall be entitled to grant specific performance, damages, interest, etc. The Arbitrators shall be entitled to avoid all rules relating to evidence and procedure as are expressly avoidable under the law but shall give reasons for the award.

The Award(s) made by the Arbitrators shall be final and the parties agree to be bound by the same.

27. In connection with the aforesaid arbitration proceedings, the Courts at Kolkata only shall have exclusive jurisdiction to receive, entertain, try and determine all actions and proceedings.”

15. The supplementary agreement was entered into in furtherance of the lease deed dated June 13, 2023, which is available from the recital, which is quoted below:-

“**A.** The Lessee had approached the Lessor to grant a lease in respect of the Said Property morefully provided in the First Schedule which has been executed on 13th day of JUNE, 2023 on inter alia the terms and condition as stated therein;”

16. Under such circumstances, without going into the merits of the allegations made against the respondents, this court deems it fit to appoint an Arbitral Tribunal on account of failure of the respondents to take any steps in this regard pursuant to the notice invoking arbitration issued by the petitioner. All objections by the respondents may be raised before the learned Arbitrator.

17. Under such circumstances, this application is disposed of by appointing Mr. Domingo Gomes, Advocate Bar Library Club, 2nd floor, High Court at Calcutta as the petitioner’s nominee, Mr. Sarbajit Mukherjee, Advocate Bar Library as the respondent’s nominee, and Miss Hanshohana

Chakraborty, learned Advocate Bar Library Club will be the Presiding Arbitrator.

18. The appointment of the Arbitral Tribunal is subject to compliance of Section 12 of the said Act by the learned members of the panel of the Arbitral Tribunal and the learned members of the Arbitral Tribunal shall be entitled to fix their remuneration in terms of the Schedule of the Arbitration and Conciliation Act, 1996.

19. There will be no order as to costs.

20. Parties are directed to act on the server copy of this judgment.

21. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Shampa Sarkar, J.)