



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

Bench
Sr.No:-92
[3441]

ARBITRATION APPLICATION NO: 62 of 2023

M/s. Kranthi Grand DKNV Hospitalities and another ...Applicants

Vs.

M/s. Manasa Estates and Hospitality Pvt. Ltd. and 2 others ...Respondents

Advocate for Applicant: Mr. Dheera Kanishka

Advocate for Respondent: Mr. V. V. Ravi Prasad

CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR

DATE : 20.02.2025

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This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (for short, "the Act of 1996") seeking the appointment of an arbitrator for purposes of adjudicating the disputes arising out of and in connection with Sub-Lease, dated 06.01.2018.

2. The applicant, it is stated, entered into a Sub-Lease/Agreement with respondent No.1 – M/s. Manasa Estates and Hospitality Pvt. Ltd., who was a lessee of a property with a right of creating a Sub-Lease in favour of third parties. The Sub-Lease was taken to run a hotel from the premises in question, for a period of eight years, commencing from 01.04.2018 on a monthly rental of Rs.14,00,000/- (Rupees Fourteen Lakhs Only).

3. The applicant claims that an amount of Rupees Thirty Lakhs was invested for purposes of renovating the building to make it suitable for purposes of running a hotel and restaurant. However, the respondents without any just cause or reason started interfering with the peaceful possession of the applicant and even when the applicant was entitled to remain in possession till 2026, as per the said lease, the respondents forcibly occupied the property and dispossessed the applicant in gross violation of the terms and conditions of the lease deed.

4. It is stated that as per the Clause 15 of the said lease agreement, disputes were agreed to be resolved through the mechanism of arbitration by Sri Venu Gottipati, who was specifically named as an arbitrator for such a purpose.

5. The applicant claims that it served upon the respondents a notice, dated 23.09.2023, invoking the arbitration clause but instead of the nominated arbitrator, suggested the name of one Sri K. Ravi, Advocate, as an arbitrator to which the respondents did not agree, hence, the present application, seeking the appointment of an independent arbitrator, other than Mr. Venu Gottipati, who was the named arbitrator.

6. The reason for not accepting the named arbitrator as an arbitrator, in terms of the Sub-Lease Agreement, according to the applicant, in paragraph 14 of the present application is limited to the following explanation:

“14. ...The respondents failed to agree for the said proposal of the petitioner and hence the petitioners are filing this application invoking the jurisdiction of this Hon'ble court. It is submitted with respect that the petitioners do not trust the arbitrator named in the agreement since he had taken the side of the respondents and failed to respond to the cries of the petitioners.”

6. Learned counsel for the respondents has vehemently opposed the appointment of an arbitrator other than the agreed arbitrator, Sri Venu Gottipati, stating that there was absolutely no plausible reason for insisting upon the appointment of any arbitrator other than the nominated arbitrator as per the Agreement.

7. Heard learned counsel for the parties.

8. It is not denied that the applicant at the time of signing the Sub-Lease Deed/Agreement had agreed to have any dispute that arise between the parties to the Sub-Lease Deed/Agreement, dated 06.01.2018, resolve through Sri Venu Gottipati, who was to act as an arbitrator. It is not the case of the applicant that Sri Venu Gottipati, suffered any of the miscalculations and ineligibilities to be appointed as an arbitrator as envisaged under Section 12(5) of the Act of 1996.

9. The explanation rendered for appointment of an arbitrator other than the nominated arbitrator as per the Sub-Lease Deed is quite casual and without any basis, much less has there been placed any material on record by the applicant that the named arbitrator would not act independently or impartially. In fact, as has been held by a three-Judge Bench of the Supreme Court in

Northern Railway Administration vs. Patel Engg. Co. Ltd.¹ and followed by **Indian Oil Corporation Limited and others vs. Raja Transport Private Limited**², reference of disputes to the named arbitrator is a rule and ignoring the named arbitrator/Arbitral Tribunal shall be an exception to the rule, to be resorted to only for valid reasons. For facility of reference, what was said by the Apex Court in **Indian Oil Corporation Limited and others vs. Raja Transport Private Limited (supra)** is reproduced hereunder:

“45. If the arbitration agreement provides for arbitration by a named arbitrator, the courts should normally give effect to the provisions of the arbitration agreement. But as clarified by Northern Railway Admn., where there is material to create a reasonable apprehension that the person mentioned in the arbitration agreement as the arbitrator is not likely to act independently or impartially, or if the named person is not available, then the Chief Justice or his designate may, after recording reasons for not following the agreed procedure of referring the dispute to the named arbitrator, appoint an independent arbitrator in accordance with Section 11(8) of the Act. In other words, referring the disputes to the named arbitrator shall be the rule. The Chief Justice or his designate will have to merely reiterate the arbitration agreement by referring the parties to the named arbitrator or named Arbitral Tribunal. Ignoring the named arbitrator/Arbitral Tribunal and nominating an independent arbitrator shall be the exception to the rule, to be resorted for valid reasons.”

10. The applicant in the present case has placed no material on record which would in the least suggest the impartiality or likelihood of bias which

¹ (2008) 10 SCC 240

² (2009) 8 SCC 520

might be exhibited during the course of the proceedings by the nominated arbitrator against the applicant.

11. In the case of **Indian Oil Corporation Limited(supra)** the Apex Court held that ‘an arbitration clause is a package which may provide for what disputes are arbitrable, at what stage the disputes are arbitrable, who should be the arbitrator, what should be the venue, what law would govern the parties, etc. A party to the contract cannot claim the benefit of arbitration under the arbitration clause, but ignore the appointment procedure relating to the named arbitrator contained in the arbitration clause’. At this stage, it would also be worthwhile to reproduce the view expressed by the Apex Court at paragraph 14 of **Indian Oil Corporation Limited(supra)**, it held:

“14. No party can say he will be bound by only one part of the agreement and not the other part, unless such other part is impossible of performance or is void being contrary to the provisions of the Act, and such part is severable from the remaining part of the agreement. The arbitration clause is a package which may provide for what disputes are arbitrable, at what stage the disputes are arbitrable, who should be the arbitrator, what should be the venue, what law would govern the parties, etc. A party to the contract cannot claim the benefit of arbitration under the arbitration clause, but ignore the appointment procedure relating to the named arbitrator contained in the arbitration clause.”

12. Be that as it may, the disputes arising out of and in connection with the Sub-Lease Deed, dated 06.01.2018, are referred to the nominated arbitrator, Sri Venu Gottipati, who shall enter upon the reference and adjudicate upon

the disputes. The parties shall be free to file detailed claims and counter-claims before the learned Arbitrator, who shall render the Award within the prescribed statutory period. The learned Arbitrator shall also be entitled to claim the fee in consultation with the parties or as per the provisions of the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

13. Accordingly, the present arbitration application is disposed of. There shall be no order as to costs.

Pending miscellaneous applications, if any, in this petition, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

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