

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH 2021

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CIVIL MISCELLANEOUS PETITION No.197/2020

Between:

M/s. Kenstream Ventures LLP,
A Limited Liability Partnership,
Registered under the provisions of the
Limited Liability Partnership Act, 2008
Having its Registered Office at
No.130/2, Ulsoor Road,
Bengaluru - 560 042.

Represented by its
Authorized Signatory
B. Praveen Kumar.

... Petitioner

(By Sri. Joseph Anthony, Advocate)

And:

M/s. Sports and Leisure Apparel Ltd.,
A Company incorporated under the
provisions of the Companies Act, 1956
Having its Corporate Office at
408, Signature Tower - B,
NH-8, Gurgaon - 122 001.

Represented by its
Authorized Signatory,
Mr. Sumit Sharma.

...Respondent

(By Sri R. Kiran, Advocate)

This Civil Miscellaneous Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator for adjudication of disputes that have arisen between the petitioner and the respondent in terms of Clause 20 of the registered Lease Agreement dated April 06, 2015 (Annexure-A).

This Civil Miscellaneous Petition coming on for admission, this day, the Court made the following:

ORDER

The petitioner has sought for appointment of a sole Arbitrator for adjudication of disputes that have arisen between the petitioner and respondent in terms of Clause-20 of the registered Lease Agreement dated 06.04.2015.

2. The petitioner submits that the respondent had executed the registered Lease Agreement with M/s.Puravankara Projects Limited for lease of property. It is stated that as per the sale deed dated 03.12.2019, M/s.Puravankara Projects Limited sold its share in favour of petitioner through the registered Sale Deed.

3. It is further submitted that M/s.Puravankara Projects Limited issued a notice of attornment to the

respondent informing the respondent that M/s.Puravankara Projects Limited has sold its share in the project 'The Pavilion' in favour of the petitioner.

4. It is stated that the petitioner has also issued the notice of confirmation to the respondent informing the respondent that it has purchased the share of M/s.Puravankara Projects Limited confirming the terms and conditions of the Lease Agreement which would remain valid and subsisting and would continue to bind the petitioner and the respondent.

5. It is stated that as there was default in payment of rent under the Lease Agreement, the petitioner has issued the legal notice and has eventually sought for invocation of Arbitration Clause as per the legal notice at Annexure-H dated 05.10.2020 detailing the dispute, which has been served on the respondent. In fact, the respondent has also made out his reply to the earlier notice of the petitioner. The respondent has also replied to the notice of the petitioner dated 05.10.2020 as per the reply notice

dated 19.10.2020, wherein the proposed arbitrator by the petitioner has been specifically objected to.

6. Upon notice in the present petition, the respondent has put in appearance.

7. Learned counsel for the respondent contends that attornment of tenancy though is admitted the clause for arbitration in the original Lease Agreement does not *ipso facto* stand incorporated as regards the relationship between the present petitioner, who is the subsequent purchaser and the respondent, who is the original lessee.

8. It is contended that there has to be incorporation of arbitration clause expressly, failing which, it cannot be deemed that the arbitration clause would also be extended to any legal relationship between the petitioner and the respondent, where the petitioner is a subsequent purchaser, reliance is placed on the judgment of Apex Court in the case of **Elite Engineering and Construction (Hyderabad) Private Limited, represented by its Managing Director v.**

Techtrans Construction India Private Limited,
represented by its Managing Director reported in **(2018) 4**
SCC 281 and attention is drawn to para-17 of the decision.

9. Learned counsel for the petitioner on the other hand would contend that the attornment as per the accepted procedure not being in dispute, the petitioner stands in the position of a original lessor under the Lease Agreement dated 06.04.2015 and steps into the shoes of M/s.Puravankara Projects Limited and draws attention to Clause-12, which provides for attornment, he submits that without any further document being executed, once attornment in terms of Clause-12 is completed, the petitioner steps into the shoes of M/s.Puravankara Projects Limited. Attention is also drawn to the observation made in para-70 of the Apex Court's decision in the case of **Chloro Controls India Private Limited v. Severn Trent Water Purification INC. and Others** reported in **(2013) 1 SCC 641.**

10. Heard both sides.

11. It must be noted that Clause-12 of the Lease Agreement provides for attornment and it is stipulated that in the event of any sale of demised premises, the same would be subject to leasehold rights of the lessee and the lessor is required to inform such purchaser of the leasehold rights as regards lessee herein and the requisite procedure for attornment has been provided.

12. It is pointed out that the respondent under the Lease Agreement dated 06.04.2015 between M/s.Puravankara Projects Limited has issued the notice of attornment on 02.03.2020, a copy of which is enclosed at Annexure-'B' and by notice of confirmation dated 02.03.2020 at Annexure-'C' the petitioner herein has addressed a letter to the respondent confirming to abide by the terms of Lease Agreement dated 06.04.2015.

13. Subsequently, it is pointed out that the respondent has addressed a communication through its legal counsel on 19.10.2020 wherein, it is admitted that the

lease, rent, and other charges as per the Lease Agreement dated 06.04.2015 is being paid to the petitioner herein.

14. Clause-20 of the Lease Agreement is wide enough to include the disputes in relation to the said agreement.

15. In light of the sale deed executed by M/s.Puravankara Projects Limited, the present petitioner steps into the shoes of M/s.Puravankara Projects Limited in the Lease Agreement dated 06.04.2015. Once the procedure regarding attornment has been accepted, the present petitioner steps into the shoes of M/s.Puravankara Projects Limited and the arbitration clause would also be binding as regards the legal relationship between the petitioner and respondent pursuant to the attornment as per the procedure stipulated.

16. The Apex Court in the case of ***Chloro Controls India Private Limited (supra)*** while adverting to the Group of Companies Doctrine has also envisaged the

situation where a person has succeeded to certain rights and obligations by virtue of contract by way of substitution or where the rights have been transferred by way of contract.

17. Learned counsel for the respondent points out the necessity of incorporation for the purpose of arbitration clause being part of the subsequent legal relationship. In the present case, there is no subsequent contract subsequent to the lease agreement dated 06.04.2015 and the attornment provides for the present petitioner to step into the shoes of M/s.Puravankara Projects Limited once the procedure for attornment has been followed without any further documentation and the petitioner steps into the shoes of M/s.Puravankara Projects Limited.

18. The binding effect of arbitration clause as regards non-signatories has also been considered by the Apex Court in **Cheran Properties Limited v. Kasturi and Sons Limited and Others** reported in **(2018) 16 SCC**

413 and the law laid down in ***Chloro Controls India Private Limited (supra)*** has been reiterated.

19. Taking into account the wide nature of arbitration clause, the disputes arisen in relation to the said Lease Agreement, it cannot be said that the petitioner cannot invoke the arbitration clause. The Apex Court in the case of ***Cheran Properties Limited (supra)*** has pointed out the evolution of law and the binding nature of arbitration clause on non-signatories as well.

20. In the case of ***Elite Engineering (supra)***, the Court has discussed as to the incorporation of an arbitration clause from another agreement and also relies on the judgment in the case of ***M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited*** reported in **(2009) 7 SCC 696**. However, the present case presents a different factual matrix where it is not a case of a non-signatory being bound by an arbitration clause in a different contract, but a case where the subsequent purchaser stands substituted in place of the original owner in the lease deed

by way of attornment. Accordingly, the judgment in the case of ***Elite Engineering (supra)*** does not come to the aid of the respondent. Hence, the contention of respondent is rejected.

21. Reliance is also placed on the decision of Delhi High Court dated 22.10.2020 in the case of **Sanjiv Prakash v. Seema Kukreja and Others** in **ARB.P.No.4/2020** and attention is drawn to the observations made at paras-97 and 98. A close perusal of the said judgment, in particular, para-97 would make it clear that the observation is made in the context of arbitration agreement being modified by supplementary agreement and where the supplementary agreement has changed the entire edifice of the principal arbitration agreement and in such context, it is observed that there could be no arbitration between the parties and reference under Section 11 would not arise.

Further, para-98 of the decision also refers to a situation where an arbitration agreement being creation of

agreement may be destroyed by agreement, however, the facts in the present case are entirely different. Insofar as the lease agreement between the parties provides for procedure for attornment and hence, it cannot be said that there was any intention pursuant to sale of the demised property, to bring to an end all other terms and conditions as regards the legal relationship of lessor and lessee. In fact, the clause for attornment on the other hand envisages continuance of legal relationship between the lessor and lessee on the same terms as agreed under the Lease Agreement dated 06.04.2015. Therefore, the judgment of Delhi High Court is not applicable.

22. It must also to be noted that in the present proceedings, the Court is only expressing *prima facie* opinion in terms of law laid down in the case of **Vidya Drolia and Others v. Durga Trading Corporation** reported in **2020 SCC OnLine SC 1018**.

23. Accordingly, this petition is allowed by appointing Hon'ble Sri Justice A.V.Chandrashekara, Former Judge of

this Court to enter into the said reference of Arbitration and act as the Sole Arbitrator in the present case in the Arbitration and Conciliation Centre (Domestic & International), Bengaluru, as per the Rules governing the said Arbitration Centre.

- (i) All claims and contentions are left/kept open to be decided by the Arbitral Tribunal.
- (ii) A copy of this order be sent forthwith to the Arbitration and Conciliation Centre (Domestic & International), Khanija Bhavan, Bengaluru, for proceeding further in the matter.
- (iii) Registry is directed to return all original documents produced by any of the parties after obtaining Photostat copies of the same.

**Sd/-
JUDGE**

VGR
ct:mhp