



2024:CGHC:47358

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBR No. 11 of 2024**

Himalaya Complex Vyapari Kalyan Sangh Supela Bhilai Society Through Its Joint Secretary Sanjay Kumar Ganguly, Having Its Office At Shop No. 37, Himalaya Complex Supela Bhilai, Block- Durg, District Durg Chhattisgarh. Pin-490023.

... Applicant**versus**

Himalaya Commercial Complex Private Limited Through Its Chariman, Santosh Golchha, Akash Ganga, Supela, Bhilai, Tahsil And District Durg, Chhattisgarh.

... Respondent

For Applicant : Ms. Rajani Soren, Advocate.

For Respondent : Mr. Prateek Sharma, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice**Order on Board****02/12/2024**

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of sole Arbitrator.
2. The facts, in brief, as projected by the applicant is that the applicant is a Society registered under the Society Registration Act 1973. The society comprises of lease owner traders of shops in Himalaya Complex, Supela Bhilai. The society has been formed to secure and promote the interest of the shop lease owners. The members of the applicant Society are the lessees of the respondent, a registered private Company and all the individual members have entered into lease agreement for transfer of individual shop. In the general body meeting of the applicant Society held

on 25.08.2023 the society was authorized to take necessary steps for appointment of arbitrator to settle the dispute between lessee members and the respondent. It was decided that necessary steps would be taken for issuance of notice and approaching the Hon'ble High Court if required.

3. According to Ms. Soren, the lease agreement stated that the respondent had acquired the land on lease from the Municipal Corporation Bhilai, Durg for construction of Restaurant on Shopping Complex. The lease was granted up to 21.03.2021, which could be extended for 60 more years. The lease agreement had various terms and conditions as detailed in paragraph 4 of the petition. The Municipal Corporation Bhilai has not renewed the lease granted to the respondent on the ground that the respondent has carried out illegal construction without the permission of the Municipal Corporation. The applicant-Society has been regularly paying the maintenance and premium amount, however the respondent has not maintained the complex satisfactorily. As per the lease deed between the respondent and the Municipal Corporation, the respondent is supposed to pay an annual premium of Rs.1,07,500/-, however, the respondent has been charging the members of the petitioner society Rs. 3,50,000/- per year under this head. This has given rise to a dispute between the petitioner and the respondent. The clause with regard to 10% increase in rent every three years is contrary to the lease agreement between the respondent and Municipal Corporation as per which the premium would be increase only after the end of the 30 years lease period. This has given rise to a dispute between the lessees and the respondent. The respondent has carried out illegal construction violating the approved plan and the easementary rights of the applicant.
4. Ms. Soren further submits that as per clause 17 of the lease agreement, the respondent is registered under the Chhattisgarh Prakoshth Swamitva

Adhiniyam 1976, however the respondent has taken no action to register the lessee as per the Act. As per clause 10 of the lease agreement the cost of the registration of lease deed for transfer of the shop has been borne by the applicant. This clause is illegal for the reason that a new lease deed has to be executed between the transferee and the respondent, the cost of which should be borne by the respondent. In the light of the several disputes arising out of the lease agreement, the members of the petitioner society. issued notice to the respondent under section 11 of the Arbitration and Conciliation Act, 1996 for implementation of the clause-14 of the lease deed and appointment of an arbitrator to decide the dispute between the applicant and the respondent. Despite being approached several times the respondent has taken no steps to appoint an arbitrator under Arbitration and Conciliation Act, 1996 in compliance of clause- 14 of the lease agreement. The lease deed provide for determination of disputes by an arbitrator under the Arbitration and Conciliation Act 1996, therefore, the applicant has preferred the instant application for appointment of an Arbitrator.

5. On the other hand, Mr. Prateek Sharma, learned counsel for the respondent, at the outset, submits that the present application is not maintainable in its present form because there is no agreement executed between the applicant and the respondent therefore, the applicant cannot invoke arbitration clause of a agreement in which the applicant is not even party and the instant application is liable to be dismissed on this account alone. One Meharban Singh is member of the applicant Society and filed the instant petition through society and also filed a separate individual arbitration application for the same relief bearing Arbitration Petition No. 41 of 2023, which is also pending before this Hon'ble Court. Therefore two petitions are filed by Meharbaan Singh, one in individual capacity and one through society, for same relief, thus the instant petition

is not maintainable on this count alone and liable to be dismissed. Further, from a bare perusal of the agreement and petition, it is evident that the respondent was given the Himalaya Commercial complex on lease ending on 21.03.2021, which could be extended twice for 30 years. However, it is important to mention here that after 21.03.2021 the lease period of the said complex has not been extended in favour of the respondent. Therefore, lease period of applicant-Society are also not extended and lease expired between the parties and the instant petition is not maintainable before this Hon'ble Court and liable to be dismissed. Further, the petition has been preferred at a highly belated stage with unexplained delay and laches by the petitioner on 05.04.2024, after lapse of about more than three years from the expiry of lease period of the respondent itself, raising disputes which was known to the applicant at the time of agreement itself, but the applicant signed it without any demur or protest and now taking a u-turn and challenging the contents of agreement, which is not permissible in the eye of law and stopped by the principle of estoppel.

6. Mr. Sharma further submits that the agreement between the parties has already expired on 21.03.2021 and no renewal agreement or extension agreement is executed till date between the present parties. Therefore, after expiry of lease agreement between the parties on 21.03.2021, at this belated stage, no application for appointment of arbitrator relating to expired agreement between the parties is maintainable and is liable to be dismissed.
7. Placing reliance on the rejoinder filed by the applicant-Society, Ms. Soren submits that even if there is no renewal agreement or extension agreement is executed till date between the parties after the expiry of lease agreement, the Supreme Court has reiterated that an arbitration clause survives the termination of the main contract. Even if the principal

contract is declared null and void, the arbitration clause remains effective for resolving disputes.

8. I have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
9. A preliminary objection has been raised by the respondent with respect to the maintainability of this petition under Section 11(6) stating that the present arbitration request has been filed by Society and not by the members of the Society in individual capacity when the agreement was entered into between the respondent and the individual members of the Society.
10. On a query being made by this Court as to why the Society has filed this petition and not the individual members, Ms. Soren submits that in order to avoid multiplicity of litigation, the petition has been filed by the Society which represents their cause collectively. Since another petition being ARBR No. 41/2023 has already been filed by one Meharban Singh in an individual capacity, who is also stated to be a member of the applicant-Society, this petition is not maintainable as two petitions for the same relief, cannot be entertained.
11. As a result, this arbitration request stands **dismissed**. However, the members of the applicant-Society are at liberty to file petition in individual capacity raising their individual grievances for appointment of Arbitrator, if so advised.

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE