

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2015

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

CIVIL MISCELLANEOUS PETITION NO.26/2015

BETWEEN:

SRI.B.S.T.SWAMY
S/O.LATE SHRI B.T.SOMMANNA
AGEDA BOUT 62 YEARS,
RESIDING AT NO.6,
7TH MAIN, 80 FEET ROAD,
KORAMANGALA, 3RD BLOCK,
BENGALURU – 34

... PETITIONER

(BY SRI.N.P.KALLESH GOWDA, ADVOCATE)

AND:

G.C.YADAVA
OFFICIAL LIQUIDATOR
HIGH COURT OF KARNATAKA
MINISTRY OF CORPORATE AFFAIRS,
OFFICE OF THE OFFICIAL LIQUIDATOR
CORPORATE BHAVAN, 12TH FLOOR,
RAHEJA TOWERS, M.G.ROAD,
BENGALURU – 01

.....RESPONDENT

(BY SRI.V.JAYARAM ALONG WITH
SRI.K.S.MAHADEVAN, ADVS.)

THIS PETITION IS FILED UNDER SECTION 11(4) OF
THE ARBITRATION AND CONCILIATION ACT 1996,
PRAYING TO APPOINT (1) SHRI.K.G.SADASHIVAIH,

ADVOCATE, (2) SHRI.M.R.VIJAY RAGHAVAN (3) SHRI.H.M.BHARATHESH (4) SHRI.MOHAN RAM (5) SHRI.PALANETHRA, OR ANY OTHER FIT PERSON AS SOLE ARBITRATOR TO ADJUDICATE, DECIDE THE DISPUTES AND DIFFERENCES BETWEEN THE PETITIONER AND THE RESPONDENT ARISING OUT OF AND IN CONNECTION WITH THE AGREEMENT DATED 21.04.2014 REGISTERED ON 25/04/2014 AND SUCH OTHER DISPUTES RAISED BY THE PARTIES HERETO.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner is seeking for appointment of arbitrators as prayed for in the petition or to appoint any other fit person as sole arbitrator to adjudicate and decide the disputes and differences that has arisen between petitioner and respondent in connection with the agreement dated 21.04.2014 contending interalia that petitioner is the owner of property situated at Koramangala and a lease agreement came to be entered into between petitioner and respondent whereunder petitioner had agreed to lease the said property to respondent for a period of 10 years and as agreed to under said agreement respondent was put in possession

of the premises and during the continuation of the lease termination notice dated 05.12.2014 came to be issued by respondent to petitioner intimating thereunder that respondent would vacate the premises in question on or before 28.02.2015 and same being illegal and not in accordance with law, a notice came to be issued by petitioner on 20.12.2014 indicating thereunder that such termination is bad and as such a dispute has arisen between the parties under said agreement dated 21.04.2014 and same requires to be adjudicated by arbitrators or arbitrator. It is contended that parties have agreed to resolve their dispute as per Clause 15 of the agreement that parties would settle their dispute under the provisions of Arbitration and Conciliation Act, 1996. Hence, it is contended that petitioner got issued a legal notice on 03.01.2015 calling upon respondent to concur with the appointment of arbitrators or in the alternate to suggest name of any advocate to act as arbitrator within 15 days from the date of receipt of this notice, which has been denied by respondent by reply

dated 07.01.2015, Annexure-F and as such, it has given rise to cause of action for petitioner to seek for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. Hence, Sri.N.P.Kallesh Gowda, learned counsel appearing for petitioner reiterating the grounds urged in the petition seeks for appointment of sole arbitrator.

2. Per contra, Sri.K.S.Mahadevan, learned counsel appearing for respondent along with Sri.Jayaram, Advocate would submit that there is no dispute between the parties and after having entered into lease agreement with petitioner in terms thereof respondent has vacated the premises taken on lease by issuing three (3) months notice to petitioner and it was also pursuant to permission granted by the Company Court to vacate the premises and as such, there is no dispute which requires to be adjudicated by the Arbitral Tribunal or the arbitrator of such Arbitral Tribunal and hence, he prays for dismissal of the petition.

3. Having heard the learned Advocates appearing for parties and on perusal of annexures appended to petition and in particular arbitration clause of subject agreement (dated 21.04.2014) would indicate that parties to the agreement have agreed as follows:

“15. Should any dispute or difference arise concerning the subject matter of these presents or interpretation of any covenant, clause or thing herein contained or otherwise arising out of this lease agreement, the same shall be referred for arbitration to the Tribunal, having, Sole Arbitration. At the time of making a request for reference of dispute to the arbitration, the claimant shall along with such request send a panel of five persons to the other party. The other party shall within 15 days of the receipt of such communication select one member of the panel to act as Sole Arbitrator. In case none in the proposed panel is acceptable to the other party, such/other party shall within the above 15 days send another panel of five persons to claimant, and the claimant shall be entitled to nominate the Sole Arbitrator from among the panel sent by the opposite party. In case none of the members of this panel is acceptable to the claimant, the Sole Arbitrator shall be appointed by the Hon'ble High Court of Karnataka, Bangalore.

The provisions of Arbitration and Conciliation Act, 1996 with any statutory

modification thereof and rules framed there under shall be applicable to such arbitration proceedings which shall be held at Bangalore. The arbitration proceedings shall be conducted in English.

Cost of the arbitration shall be borne as directed by the Arbitral Tribunal. For the purposes of this clause, the Arbitrator shall be appointed by the Hon'ble High Court of Karnataka, Bangalore on behalf of the Official Liquidator attached to the Hon'ble High Court of Karnataka, Bangalore."

4. It is not in dispute that respondent herein who is the Official Liquidator attached to Company Court had entered into a lease agreement with the petitioner on 21.04.2014 in respect of immovable property described under Schedule A to the said agreement with the leave of Company Court. Clause 13 of said agreement enables the lessee to terminate the lease by giving three (3) months notice. Said clause reads as under:

"13. The Official Liquidator shall be entitled to terminate the lease at any time giving to the Lessor three months previous notice in writing of his intention to do so."

5. Pursuant to said clause Official Liquidator namely respondent herein has terminated the lease on 05.12.2014 by giving three (3) months notice to petitioner vide Annexure-B. Said termination notice has been replied to by petitioner on 20.12.2014. The grievance of petitioner is that on account of lease having been entered into for a period of ten (10) years with respondent, petitioner had raised loans from financial institutions and as such without assigning any reason or terminating the lease would be bad and not be binding on the petitioner.

6. Be that as it may. Arbitration clause in agreement mandates the reference of disputes to agreed arbitrator appointed in terms of Section 11 of the Arbitration and Conciliation Act, 1996. In the absence of any dispute, request for appointment of arbitrator cannot be acceded to and no arbitrator can be appointed for the purposes of resolution of a non-existent dispute. In other words, dispute should be

alive so as to enable a party to agreement to seek for appointment of such arbitrator. The meaning of the word "*dispute*" would indicate that controversy having arisen between parties in respect of contract requiring it to be adjudicated by resorting it to arbitration and when there is an assertion of claim by one of the party and denial of it by the other, then it would give raise for appointment of an arbitrator under Section 11(6) of the Act by the Chief Justice or his designate. The existence of a dispute is essential criteria for appointment of an arbitrator under the Act. Non existent dispute cannot be referred to an arbitrator. In the instant case, the reading of subject agreement does not even remotely suggest that respondent is not entitle to terminate the lease pursuant to Clause 13 already extracted hereinabove. Respondent has issued a termination notice by giving three (3) months notice to petitioner of its intention to terminate the lease. Accordingly, lease has been terminated and as such, there is no dispute alive for being adjudicated by the arbitrator. At this

juncture, it would also be apt to note that petitioner herein invoking Section 9 of Arbitration and Conciliation Act, 1996, had sought for temporary injunction to restrain the respondent herein from vacating premises in question by filing Arbitration Application No.4/15 before the City Civil Court and said Court after adjudication by order dated 28.02.2015 has dismissed the same.

7. In that view of the matter, I do not find any merit in this petition. Accordingly, petition stands rejected.

**Sd/-
JUDGE**

DR