



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Arbitration Application No. 53/2022

1. Kapil Jain S/o Anil Kumar Jain,
2. Deepak Jain S/o Anil Kumar Jain,
3. Priyanka Surana W/o Kapil Jain,

----Applicants

Versus

Khosla Electronics Pvt. Ltd., 15/2 B, Shankaripara Road,
Bhowanipore, Kolkata-700025 Through Its Directors Mr. Manish
Khosla And Mr. Manoj Khosla.

----Respondent

For Applicant(s) : Mr.Abhishek B.Sharma, Adv.
For Respondent(s) : Mr.R.S.Sinsinwar, Adv.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

04/08/2023

1. This Court asked learned counsel appearing on behalf of the respondent as whether he wants to file reply to the arbitration application or not.
2. Learned counsel for the respondent submitted that he is prepared to argue the matter without filing reply.
3. This Court, in view of such situation, has heard learned counsel for the parties.
4. Learned counsel appearing for the applicants submitted that the present arbitration application has been filed by the applicants



under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

5. The brief facts, as pleaded in the application, are that the Lease Agreement was executed between the applicants and the respondent on 24.09.2018.

6. The applicants being lessor of the property, had given its premises on rent in their building situated at 80/104, Madhyam Marg, Mansarovar, Jaipur and the respondent being lessee wanted to establish an Electronics ShowRoom Space in Mansarovar, Jaipur, & took premises of the applicants on lease for a period of 108 months commencing from 1.12.2018 to 30.11.2027 on the terms and conditions mentioned in the Lease Agreement, executed between the applicants and non-applicant.

7. The applicants after execution of lease agreement had sent e-mail to the respondent in respect of compliance of terms of the Lease Agreement executed between the parties.

8. The applicants have pleaded that the respondent while making use of the property violated terms of the Lease Agreement, due to substantial changes, which were made in respect of the premises let out to the respondent.

9. The applicants have alleged that several act of the respondent reflects that he had modified building of the applicants and substantial loss was suffered thereby.

10. The applicants have pleaded that the respondent did not even restore the original shape of the basement let out to it and on the contrary, the allegation was levelled against the applicants that they had not complied with terms of the lease.



11. The applicants have pleaded that the respondent did not pay rent from October, 2019 to November, 2019 and further there were other several outstanding dues, which were not paid by the respondent.

12. The applicants, faced with such a situation, initially approached this Court by filing S.B.Civil Arbitration Application No.50/2020.

13. Learned counsel appearing for the applicants submitted that the application, so filed by the applicants, was dismissed by this Court on 02.12.2021 and this Court considering the Clause 7, 8 & 9 of the Lease and License Agreement (hereinafter read as 'the Agreement') found that the parties were first required to make an attempt to resolve such dispute by friendly consultation and if the dispute was not resolved by friendly consultation within 60 days, then only the matter could be referred to the arbitration, for resolution of dispute.

14. Learned counsel submitted that after decision of this Court, the applicants requested the respondent to resolve the dispute but no action was taken even when the notice dated 27.12.2021 was served to the respondent.

15. Learned counsel for the applicants submitted that in spite of notice being served upon the respondents, when no action was taken to resolve the dispute, as such the applicants are constrained to approach this Court.

16. Learned counsel for the applicants submitted that in the Lease Agreement signed between the parties, there is Clause of arbitration and as such counsel refers to Clause 7, 8 & 9 of the



Agreement. Clause 7, 8 & 9 of the Agreement is quoted hereunder:-

“(7) Any dispute arising howsoever in connection with the interpretation or implementation or purported termination of this Deed, the parties shall attempt in the first instance to resolve such dispute by friendly consultations.

(8) If such dispute is not resolved through friendly consultations within 60 (Sixty) days after commencement of discussions or such longer period as the parties agree to in writing, then any party may refer the dispute for resolution by arbitration.

(9) All such disputes shall be referred to and finally resolved by arbitration by a sole arbitrator to be appointed jointly by the parties. In case the Lessors and the Lessee are not able to jointly appoint a sole arbitrator, then the provisions of the Arbitration and Conciliation Act, 1996 relating to the appointment of arbitrator will apply. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be English. The place of arbitration and jurisdiction of court shall be Jaipur.”

17. Learned counsel for the applicants submitted that in spite of all the efforts being made by the applicants to resolve the dispute, the respondent had not paid the requisite amount and on the contrary the building, which was let out to the respondent-lessee, substantial damage has been done to the said building.

18. Learned counsel appearing for the respondent submitted that the applicants have wrongly filed present application before this Court and his prayer of appointment of an arbitrator, may not be accepted by this Court.



19. Learned counsel for the respondent has produced an advance receipt dated 28.11.2019, wherein the payment of Rs.2,50,000/- has been made to the applicant-Kapil Jain, as an advance for clear expenses of the property.

20. Learned counsel has also produced a copy of the receipt dated 28.11.2019 said to be executed by the applicants in favour of the respondent, wherein they have agreed to adjust amount of Rs.6,42,000/-, the amount which was deposited as a security with the respondents.

21. Learned counsel submitted that once the applicants have given receipts of receiving the payment, there remains no dispute and only to harass the respondent, present application has been filed.

22. Learned counsel for the respondent also places reliance on the judgment passed by the Apex Court in the case of **Suresh Shah Vs. Hipad Technology India Private Limited** reported in **2021 (1) Civil Court Cases 749 (S.C.)**.

23. Learned counsel on the strength of the said judgment submitted that if the lease/tenancy are not granted under Special Statutes but under Transfer of Property Act, such dispute between the parties can not be resolved by way of arbitration and as such learned counsel submits that the present application may be dismissed.

24. Learned counsel for the applicants has placed reliance on the judgment passed by the Apex Court in the case of **Vidya Drolia & Ors. Vs. Durga Trading** reported in **2021(2) SCC 1**.

25. I have heard the submissions made by learned counsel for the parties and perused the material available on record.



26. This Court finds that the first arbitration application, filed by the applicants, was not entertained by this Court and the applicants were permitted first to make an endeavor to have a friendly consultation and if the consultation was not fruitful after 60 days of the friendly consultation, liberty was granted to the applicants to approach this Court again.

27. This Court finds that the applicants after order of this Court dated 02.12.2021, approached the respondent and even the notice for friendly consultation was given. This Court finds that the respondent did not participate and make any effort to resolve the dispute by way of friendly consultation.

28. This Court finds that the Lease Agreement, as entered into between the parties, had provided the mechanism to resolve the dispute and after friendly consultation, the dispute is required to be resolved by way of arbitration.

29. This Court finds substance in the submission of learned counsel for the applicants that the grievance, which was raised by the applicants, has never been redressed by the respondent and as such there is no option except to invoke Section 11 of the Act of 1996.

30. The submission of learned counsel for the respondent that the applicants have given them receipt relating to their payment and as such nothing remains outstanding, which is required to be paid by the respondent to the applicants, this Court finds that even if some documents are in possession of the respondent in respect of some payment, the same is required to be placed in proper manner before the arbitrator.



31. This Court may not be misunderstood to say that the respondent does not have any right to represent its interest or to place the documents executed in their favour, however, if the applicants are claiming certain amount and some loss has been caused to them, role of the arbitrator is important to decide such dispute and the same may be brought into notice of the arbitrator.

32. The submission of learned counsel for the respondent is that the Apex Court in the case of **Suresh Shah Vs. Hipad Technology India Private Limited** (supra) has laid down the law that in respect of the dispute arising out of Transfer of Property Act, such disputes may not be referred to the arbitrator.

33. This Court finds that the Apex Court in the case of **Vidya Drolia & Ors. Vs. Durga Trading** (supra) has dealt with the issue that the parties to a valid arbitration agreement must abide by the consensual and agreed mode of dispute resolution and the Courts must show due respect to the arbitration agreements particularly in Commercial settings.

34. This Court finds that the respondent in the present case have not only violated the earlier order passed by this Court and further they are resolving dispute between the applicants and respondents.

35. Accordingly, the present arbitration application filed by the applicants stands allowed, while exercising the power conferred under Section 11 (5) read with Section 11(6) of the Act of 1996, appoints Hon'ble Mr. Justice G.R.Moolchandani (Former Judge), R/o Plot No.213, Taru Chhaya Nagar, Tonk Road, Jaipur, as the sole Arbitrator to adjudicate the dispute between the parties. The



payment of cost of arbitration proceedings and arbitration fee shall be made as per the 4th Schedule appended to the Act of 1996.

36. The intimation of appointment, as aforesaid, may be given by the counsel for the parties as well as by the Registry to Hon'ble Mr. Justice G.R.Moolchandani (Former Judge), R/o Plot No.213, Taru Chhaya Nagar, Tonk Road, Jaipur.



(ASHOK KUMAR GAUR), J

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