

**HON'BLE SRI JUSTICE K. LAKSHMAN**

**ARBITRATION APPLICATION No.156 OF 2021**

**ORDER:**

The present Arbitration Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act, 1996') for appointment of a sole arbitrator to resolve the disputes between the parties.

2. Heard Mr. Vasudev, learned counsel for the Applicants. Despite serving the notice, there was no representation on behalf of the Respondent.

3. The Applicants are the owners of House No. 2-85/2 in Sy. No. 69 & 70 of Majeedpur Village, Shamirpet Mandal, Medchal - Malkajigiri District. The said property was leased out for a period of nine years to the Respondent and a lease agreement dated 01.08.2019 was entered into by the parties herein.

4. According to the Applicants, the Respondent agreed to pay an amount of Rs. 2,34,036/- per month as rent along with the

GST. The Applicants also stated that the rent is enhanced 5% on the existing rent every year and the present rent is Rs. 3,04,468/-

5. The Applicants allege that the Respondent has committed defaults in payment of rent and is liable to pay rent from 01.01.2020. According to the Applicants, the Respondent issued two separate cheques dated 28.08.2020 in favour of both Applicant No. 1 and Applicant No. 2 for separate amounts of Rs. 8,90,510/- for payment of arrears till 01.06.2020. The said cheques, according to the applicant, were dishonored and returned with remark 'insufficient funds.'

6. The Applicant issued a notice dated 05.02.2021 demanding an amount of Rs. 29,52,108/- towards arrears of rent and also to vacate the property and handover the possession by 01.04.2021. According to the Applicants, the Respondent failed to pay the amount and vacate the property. Therefore, the Applicants terminated the lease agreement dated 01.08.2019 on 31.03.2021 with immediate effect. According to the Applicants, the Respondent is liable to pay an amount of Rs. 51,37,050/- for a period from January 2020 to September 2021.

7. On 15.02.2021, an arbitration notice was issued to the Respondent in accordance with Clause 20 of the lease agreement.

The said clause is extracted below:

“20) This agreement will be governed by Indian Law. Any dispute between the parties with regard to this agreement or the subject matter thereof, including existence and validity of the agreement will be settled by arbitrators under the provisions of Indian Arbitration and Conciliation Act 1996. The arbitration will be conducted in the city of Hyderabad and each party will be entitled to one arbitrator each. The two arbitrators will choose an umpire for the arbitration proceeding. The proceedings shall be conducted in English. The arbitration award is final and binding on both the parties.”

8. In the said arbitration notice, the Applicants nominated Mr. Chalapathi Rao as the arbitrator. However, no reply was received from the Respondent. Therefore, the present arbitration application was filed.

9. It is clear from the facts that dispute regarding payment of rent exists between the parties. It is also not disputed that an arbitration clause exists. It is relevant to note that the Hon'ble

Supreme Court in **Vidya Drolia v. Durga Trading Corporation**<sup>1</sup>

laid down the test to exercise power under Section 11 of the Act, 1996. In his separate opinion, Hon'ble Sri Justice N.V. Ramana held as follows:

“244. Before we part, the conclusions reached, with respect to Question 1, are:

244.1. Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

244.2. Usually, subject-matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.

244.3. The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

**244.4. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.**

**244.5. The scope of the court to examine the prima facie validity of an arbitration agreement includes only:**

**244.5.1. Whether the arbitration agreement was in writing? or**

**244.5.2. Whether the arbitration agreement was contained in exchange of letters, telecommunication, etc.?**

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<sup>1</sup>(2021) 2 SCC 1.

**244.5.3. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?**

**244.5.4. On rare occasions, whether the subject-matter of dispute is arbitrable?”**

10. In the present case, there is no dispute that the parties by incorporating Clause 20 had agreed to resolve their disputes through arbitration. Therefore, it is appropriate to refer the dispute to arbitration.

11. In light of the aforesaid discussion and the law laid down by the Supreme Court, the present arbitration application is allowed. Accordingly, Sri Justice Ramesh Ranganathan, Former the Chief Justice of High Court of Uttarakhand, is appointed as the sole arbitrator to resolve the disputes between the parties.

As a sequel, the miscellaneous applications, if any, pending in the Arbitration Application shall stand closed.

29<sup>th</sup> June, 2022  
Mgr

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**K. LAKSHMAN, J**