
(1995) 09 DEL CK 0029
In the Delhi High Court
Case No : S. No. 1872 of 1989

M. Thandani

APPELLANT

Vs

Road Transport Corporation Pvt. Ltd. and another

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Citation : (1995) 60 DLT 558

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : Mr. R.P. Sharma, for the Appellant; Mr. Anil Kher, for the Respondent

Judgement

Mr. S.D. Pandit, J.—This petition is filed by Mr. M. Thandani and Mr. H. T. Thandani under Sections 8 and 20 of the Arbitration Act.

2. The petitioners have before this court with the case that defendant M/s. Road Transport Corporation (Pvt.) Ltd. has entered into a contract between the plaintiffs on 16th of December, 1982 and pursuant to the said contract, the defendant No. 1 came in occupation of possession of the ground floor of property bearing No. 1-C, Ram Nagar, New Delhi with agreement to pay license fee of Rs. 2200/- per month. The period of license was agreed to be running between 1.10.1982 and 31st of August, 1983. The said agreement also contained the clause that in the event of any disputes or differences arising between the plaintiff and defendant No. 1 then Mr. R. P. Sharma, Advocate would be the sole Arbitrator who was to give his decision on the disputes between the parties. It is the claim of the plaintiff that after the expiry of the license period the defendant No. 1 was liable to pay damage for use and occupation of the premises for Rs. 200/- per day as per the terms of contract and defendant had not paid any amount as per the said terms since 16.12.1982. According to the plaintiff defendant has filed Suit No. 181/1985 in the court of Additional District Judge. The respondent/defendant No. 1 also filed an application for stay of the arbitration proceedings and the District Judge was pleased to stay the said application initially but ultimately on the statement made by Counsel for the

petitioner the arbitration proceedings were started. Thereafter, petitioners appointed Mr. R. S. Bakshi, as an Arbitrator but he also did not proceed with arbitration proceeding. Therefore, he is joined as respondent No. 2 in this proceeding. He has filed the present petition for removing the said respondent No. 2 as Arbitrator for solving the disputes between the plaintiff and defendant No. 1 and appoint a fresh Arbitrator to solve the dispute between the parties.

3. That defendant No. 1 contested the claim of the plaintiff by filing the written statement. It is contended by defendant No. 1 that as a matter of fact, defendant No. 1 is in occupation of the premises in question as a tenant and not as a license though initially the rent was Rs. 2,200/- per month, it was subsequently increased to Rs. 2,900/-. In view of the relations between the plaintiff and defendants being that of landlord and tenant, there could not be any dispute which can be referable to the arbitration. Defendant No. 1 also contended that the claim of the plaintiff that they are liable to pay the damages at the rate of Rs. 200/- per day for use and occupation of the premises since 1st day of September, 1984 is illegal and not tenable in law. He, thus contended that the plaintiff's suit should be dismissed.

4. The defendant No. 2 has not contested the claim of the plaintiff by filing the written statement.

5. Therefore, the only issue which arises for my consideration in this proceeding is as to whether an Arbitrator is to be appointed in this case and my finding on the same is in affirmative for the reasons stated hereinafter.

6. It is an admitted fact that an agreement has taken place between the parties on 16th December, 1982 and as per the terms of the said agreement defendant No. 1 was to pay Rs. 2,200/- per month for the use and occupation of the premises and I am not going into the controversy between the parties as to whether defendant No. 1 is a licensee or a tenant because it is not necessary to go into that controversy in view of the fact that the learned Advocate for the plaintiff does not want to make any reference on that controversy to the Arbitrator as he is aware that no reference as regards the said controversy could be made to the Arbitrator. The learned advocate for defendant No. 1 also fairly conceded before me that he has no objection if the disputes described at Sr. Nos. (a), (b) and (d) in para 12 of the petitioner's petition are referred to the Arbitrator.

7. As per the terms of the agreement which took place on 16.12.1982 the plaintiff's contention is that he is entitled to receive the amount of Rs. 200/- per day towards the use and occupation of the premises in question whereas it is the contention of the defendant that subsequent to that there is further agreement between the parties and he has to pay only Rs. 2,970/- per month towards the use and occupation of the premises. Thus, there is a controversy between the parties as at what rate the defendant No. 1 is to pay the amount to the plaintiff. Therefore, the appointment of Arbitrator is necessary for deciding the

controversy between the parties.

8. I, Therefore, appoint Mr. Dalip Singh, Advocate, a retired District Judge to be the Arbitrator in this proceeding. The following disputes are referred to him :

(1) Whether the defendant No. 1 Road Transport Corporation (Pvt.) Ltd. has not paid any amount since 1st of September, 1983 to the plaintiff towards the use and occupation of the ground floor of 1-C, Ram Nagar, New Delhi ?

(2) Whether the defendant No. 1 M/s. Road Transport Corporation (Pvt.) Ltd. is liable to pay the amount at the rate of Rs. 200/- per day for use and occupation of the said premises from 1st of September, 1983 and if not at what rate ?

(3) To what amount the plaintiff is entitle towards the use and occupation of the said premises from defendant No. 1 till date of the decision of the Arbitrator.

(4) What order for the arbitration proceedings towards Arbitrator's fee.

9. The Arbitrator is to decided the said reference and give his finding on the above four points with reasoning within six months from the receipt of copy of the order of his appointment.

10. The plaintiff to deposit Rs. 10,000/- towards cost of Arbitrator's fees. The arbitration order is to be issued to the Arbitrator on plaintiff depositing the said amount. Both the parties to bear their respective costs of the suit.

11. Allowed.