

## Sh. B. R. Sethi vs Smt. Kiran Kapoor on 30 July, 2021

**Author: Vibhu Bakhru**

**Bench: Vibhu Bakhru**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
ARB.P. 156/2020  
SH. B. R. SETHI

Through

Mr Rajesh Bhatia, Advocate

versus

SMT. KIRAN KAPOOR

Through

Mr Rajat Wadhwa, Advocate

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU  
ORDER

% 30.07.2021 [Hearing Held Through Videoconferencing]

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the A&C Act'), inter alia, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in connection with 'Leave and Licence Agreement' dated 15.03.2013 entered into between the parties.

2. The learned counsel appearing for the petitioner does not dispute that the parties had entered into the said Leave and Licence Agreement. He has, however, opposed the present petition on, essentially, two grounds. First, that the said Agreement is not stamped or registered. He submits that the said Leave and Licence Agreement purported to create an interest in an immovable property and therefore, it was mandatory for the said agreement to be registered and adequately stamped. Second, he submits that the said Leave and Licence Agreement does not contain an agreement to refer the disputes to arbitration. Although the clause mentions that the decision of the Arbitrator will be binding but it does not contemplate reference of any disputes to arbitration. He has referred to the decision of the Supreme Court in *State of Orissa & Ors v. Bhagyadhar Dash* : 2011 7 SCC 406 in support of his contention.

3. The learned counsel appearing for the respondent has countered the aforesaid submissions.

4. After some arguments, Mr Wadhwa, fairly concedes that the issue whether the deed has been adequately registered or stamped is not required to be examined in these proceedings and the said issue is also covered by a decision of a coordinate Bench of this Court in ARB. P. 349/2020 captioned *B.R. Sethi v. Rajat Kapur* decided on 22.03.2021, which relates to disputes arising in respect of a similar agreement for the adjoining property.

5. Thus, the only question to be examined is whether the aforementioned Leave and Licence Agreement includes an agreement to refer the disputes between the parties to arbitration. The relevant clause of the said Leave and Licence Agreement is set out below:-

"It is hereby further declared that every or any dispute, difference or question which may at any time arise between the parties hereto, touching or arising out of the respect of this leave and license agreement in the subject matter thereof whether during the continuance of the agreement or after, is determination in any person mutually agreed by the Licensor and the Licensee and the decision of the Arbitrator shall be binding on both the parties."

6. The contention that the said clause does not embody agreement to refer the disputes to arbitration is unmerited. A plain reading of the said clause indicates that the parties had agreed that the decision of the arbitrator in respect of any disputes, differences or questions which may arise between the parties in respect of said the Leave and Licence agreement would be final and binding. Undoubtedly, there is an apparent error in the language in the latter part of the said clause which reads as "...is determination in any person mutually agreed by....". It is apparent that intention of the parties was to word it as "..determination by any person mutually.." The word 'is' has been incorrectly introduced and the word 'in' ought to have been typed as 'by'.

7. This Court had also pointedly asked Mr Wadhwa, as to how he would interpret the clause in any other meaningful manner. He submitted that the same has no meaning. This court finds it very difficult to accept that contention.

8. It is settled law that the intention of the parties must be ascertained from the plain language of their agreement and in case of any ambiguity, the same must be discerned by the attendant circumstances. In this case, this Court has little doubt that the parties did intend to refer the disputes to arbitration. This is apparent because, the parties had clearly stated that the decision of the "arbitrator shall be binding on both the parties".

9. In view of the above, the decision in the case of State of Orissa and Others v. Bhagyadhar Dash (supra) has little application in the facts of this case.

10. In the given facts, this Court considers it apposite to allow the present petition. This Court appoints Mr Manish Kaushik, Advocate (Mobile No. 9818218885) as a Sole Arbitrator to adjudicate the disputes between the parties in this petition. This is subject to the learned arbitrator furnishing her consent and not being ineligible under Section 12(5) of the A&C Act.

11. The petition is disposed of in the aforesaid terms.

`VIBHU BAKHRU, J JULY 30, 2021 pkv