

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2257 of 2014

Al-Hamd Associates

Versus

Sohail Nawab

Date of Hearing: 15.02.2017
Plaintiff: Through Mr. Naveed Ali Advocate
Defendant: Through Raja Qasit Nawaz, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: Applicant has filed this application under Section 20 of the Arbitration Act, 1940 in pursuance of a leave and license agreement dated 01.7.2013. The defendant seizes and possess an immovable property bearing No.B-174/1, Block-5, KAECHS, Karachi measuring 800 square yards with construction thereon wherein he was successfully running and managing a hospital whereas the plaintiff has shown his interest to run the management of the subject hospital by the defendant i.e. Bismillah Taqi Hospital as a licensee against payment of monthly license fee. It is claimed that on account of some dispute the license agreement was terminated on 27.10.2014 by taking over the control of the hospital. The agreement claimed to have been cancelled on account of serious allegations of fraud.

2. Counsel for the plaintiff however without prejudice has filed this application under section 20 of the Arbitration Act, 1940 to invoke the implication of the arbitration clause in the leave and license agreement.

3. Learned Counsel for the defendant has objected to the maintainability of this application under section 20 of the Arbitration Act, 1940. He submitted that the plaintiff not being a juristic person and being an unregistered firm cannot sue the defendant. He submitted that

the plaintiff's partners being licensee cannot maintain this suit having no legal entity as being a licensee apart from plaintiff being an unregistered firm. Learned Counsel for the defendant has also raised serious questions regarding the fraud, mismanagement and misappropriation on account for which the agreement was terminated. Learned Counsel for the defendant however was enquired as to whether the dispute of the nature as referred by the plaintiff i.e. termination of the agreement itself is referable to the arbitration he submitted that since the agreement itself was terminated therefore, it is beyond the scope and domain of the Arbitrator to entertain any dispute arising out of license agreement including but not limited to termination of agreement.

4. In response to legal objections of learned counsel for defendant, which relates to locus standi of plaintiff as it is claimed to have been filed by an unregistered partnership firm, the defendant's counsel has not raised any argument vis-à-vis an application under order I rule 10 CPC bearing CMA No.7978 of 2015, though a counter-affidavit has been placed on record. The only defence in the counter-affidavit apparently is that since the leave and license agreement was granted to these individuals/partners therefore no right is available to them even if they are impleaded as individual partners of the subject unregistered firm and that unregistered firm cannot maintain this suit under section 17(d) of Registration Act, 1908.

5. They further in paragraph 6 stated that the plaintiff claims relief on the basis of leave and license agreement for the period of five years which agreement is not registered and an instrument creating a lease of immovable property for a term of more than one year is required to be registered compulsorily.

6. I have heard the learned counsel for the parties and perused the material available on record.

7. The subject agreement is for more than one year and is not a registered instrument. At the very outset I may observe that it is not a lease in respect of an immovable property which is required to be registered compulsory under Section 17(d) of the Registration Act, 1908. The dispute in question pertains to an unlawful and surreptitious termination of the leave and license agreement and the plaintiff seeks redress of the grievance by invoking the arbitration clause of the leave and license agreement, therefore, this argument stands nowhere that the subject agreement as being a lease of an immovable property is liable to be registered under section 17(d) of the Registration Act, 1908.

8. Similarly as to the merits of the application since the individual partner is sought to be impleaded as being necessary and property party I do not see any substantial defence in pursuance of such application that the individual partners are not entitled to be impleaded as being partners of an unregistered partnership firm.

9. In the case of Ardeshar Cowasjee v. KBCA reported as PLD 2003 Karachi in 314 the learned Division Bench of this Court while disposing of the petition directed the plaintiff therein to file amended plaint by substituting "Business Developers" being an unregistered partnership through its partners as being plaintiff to overcome legal impediment pertaining to maintainability of the suit.

10. In the similar circumstances, the plaintiff moved an application for impleading the partners of the plaintiff as being necessary and proper party to replace the present plaintiff which is unregistered partnership firm hence I allow such application.

11. Since the advocates have also argued the case on merit as well, I proceed further herein below.

12. The arbitration and reconciliation clause incorporated in the leave and license agreement reads as under:-

“29. That the Second Party hereby admits and acknowledges that this agreement merely confirms bare permission of Leave and License and does not create any interest into or upon the BTH or any part thereof in favour of the Second Party. It is not intended by this Agreement to create any lease, sub-lease or any other rights, titles and interests into or upon the BTH in favour of the Second Party and the Second Party hereby agrees that under no circumstances the Second Party shall claim any right to tenancy, sub-tenancy or any other right to any nature into or upon the BTH.”

13. Perusal of the aforesaid clause shows that the dispute which may arise during period of agreement or upon expiry/termination of agreement touching the true construction and interpretation of the agreement relating to rights and liabilities of the parties hereto shall be referred for reconciliation to a guiding Council and upon failure to reconcile the same shall be referred to arbitration at Karachi to be conducted by one Arbitrator to be appointed by consent of the parties. The initial tenure of this agreement was for five years unless extended with mutual consent of the parties. It is further provided that either party may not terminate agreement unless there is any violation of the clause of agreement subject to six months' notice prior to such termination in the above terms. The agreement further provides that if either party breaches any of the mandatory term of the agreement and fails to remedy the breach within 15 days notwithstanding anything therein contained, the other party reserves right to terminate this agreement immediately. The plaintiff in this matter has fairly invoked the jurisdiction of this Court in pursuance of the arbitration clause and not for any other remedy which may include reinstatement or declaration that it was unlawfully cancelled. The similar objection as to the status of the plaintiff was raised in the case of *M/s. Time and Vision International v. Dubai Islamic Bank* by the defendants therein. In the

above case the application was allowed and the defendant was directed to file original arbitration agreement in Court whereas in view of the peculiar facts and circumstances as being a licensee the injunctive relief was declined. In the instant case the plaintiff is not seeking any injunctive relief and instead chose to file this application under section 20 of the Arbitration Act for referring this dispute of alleged termination. Whether or not it is lawful on the part of the licensor to terminate is not for this Court to comment.

14. In view of the facts and circumstances, I allow the petition and direct the defendant to file original arbitration agreement within a week whereafter the matter be placed for further orders as to referring the matter to Arbitrator.

15. The pending applications are also disposed of.

Judge