

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.1453 of 2012

ORDER:

Heard Sri K.Chidambaram, learned counsel for the petitioners and Sri S.Rajan, learned counsel for respondent.

2. This Revision Petition is filed challenging the Order dt.08-04-2010 in E.P.No.238 of 2010 of the Principal District Judge, Visakhapatnam.

3. The respondent is the owner of a building in the occupation of the petitioners. There was an agreement dt.12-08-2003 between them. Disputes arose between them. There was an arbitration clause in the said agreement.

4. Arbitration Application bearing No.38 of 2008 under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') was filed before this Court for appointment of an arbitrator to adjudicate the disputes between them. It was allowed on 31-07-2008.

5. Smt. S.Meenakshi, advocate was appointed as Arbitrator by this Court to adjudicate the disputes between the parties.

6. Both parties participated in the arbitration before the said Arbitrator.

7. It is not disputed that before the Arbitrator, an award was sought directing the petitioners to surrender the ground floor of the building in question in the same condition as it was at the time of granting the licence after evicting petitioners. Other reliefs were also sought therein.

8. After hearing both sides, the Arbitrator passed an award dt.08-04-2010. She held that agreement in question is a licence agreement and not a lease deed as contended by the petitioners. She also held that the petitioners had no right to continue in possession of the property without paying the agreed licence fee and so long as they are in possession of the property, they have to pay the agreed licence fee. She also observed that the petitioners are liable to be evicted after issuance of notice as contemplated under clause 10 read with clause 14 of the agreement dt.23-08-2003.

9. This award was not questioned under Section 34 of the Act by the petitioners and had thus attained finality. Since the time for making application to set aside the arbitral award under Section 34 had expired, the respondent filed E.P.No.238 of 2010 before the Principal District Judge at Visakhapatnam to enforce the said award. It is not disputed that such enforcement of

award is permissible in the same manner, as if it were a decree of the Court.

10. In the execution petition, respondent claimed that he is entitled to execute the decree in view of the award dt.08-04-2010 of the Arbitrator. He asserted that, as directed in the said award, he had issued a notice dt.24-08-2010 to the respondent as contemplated under clause 10 read with clause 14 of the agreement dt.23-08-2003. He therefore sought for eviction of the respondent pursuant to the award.

11. The E.P. was opposed by the petitioners who contended that it was not maintainable. They contended that they had filed a memo on 30-11-2010 taking preliminary objection that the E.P. was not maintainable and that without deciding the said issue, the Court could not have proceeded further. They also contended that eviction from the subject premises was not subject matter of the award since it was not subject matter of the legal notices exchanged between the parties in 2007. Other objections on the merits of the award were also raised. There is also a pleading that subsequent to the award, there was a settlement between the parties. They also contended that the document dt.12-08-2003 is not a licence but a lease and that the award of the Arbitrator is not valid and binding on them. They claimed that they were permitted to continue for another period of

seven years and are entitled to have possession and enjoyment of the entire building as lawful tenants.

12. By order dt.15-03-2012, the Court below allowed the E.P. It rejected the contentions of the petitioners that the award is not executable. It held that as directed in the award of the Arbitrator, notice was issued under clause 10 read with clause 14 of the agreement dt.23-08-2003 and this is not disputed by the petitioners; that the petitioners cannot misconstrue the award passed by the Arbitrator merely because the words “that respondents are ordered to vacate the premises and deliver vacant possession of the same to the petitioner” were not used in the award; that the award read as a whole makes it clear that the petitioners had no right to continue in possession of the premises without paying the licence fee and they are liable to be evicted after issuance of notice under clause 10 read with clause 14 of the agreement. It held that this leaves no room to entertain any doubt that the learned Arbitrator ordered for eviction of the judgment debtors after issuance of notice under clause 10 and clause 14 of the agreement as they failed to pay the licence fee as agreed between both the parties.

13. The other contentions raised in the counter affidavit viz., that there was a subsequent settlement between the parties do not appear to have been pressed before the executing Court.

14. Challenging this order, this Revision Petition is filed.

15. Learned counsel for the petitioners contended that the order passed by the Executing Court cannot be sustained and that the E.P. itself is not maintainable. He contended that the respondent ought to have filed a fresh suit for eviction of the petitioners from the subject premises since the award dt.08-04-2010 is not an executable decree. He also sought to contend that there is no discussion in the award regarding eviction of the petitioners except in the last paragraph thereof and even that para cannot be understood as directing eviction of the petitioners.

16. Learned counsel for the respondent on the other refuted the above contention and supported the order passed by the Court below.

17. I have noticed the submissions of both sides.

18. The award dt.08-04-2010 of the Arbitrator states:

"In the result the respondent has no right to continue the possession of the property without paying the agreed licence fee and so long as he is in occupation he has to pay the agreed licence fee and he is liable to be evicted after the issuance of the notice as completed under clause 10 read with clause 14 of the agreement dt.23-08-2003. Accordingly the Award is passed."

(emphasis
supplied)

19. This award has not been questioned by the petitioners under Section 34 of the Act. Therefore, this award has attained finality and is capable of execution under the provisions of the Code of Civil Procedure, 1908 by virtue of Section 36 of the Act. It is not open to the petitioners to raise any contention touching the correctness of the Award or the relief granted therein, in the execution proceedings without challenging the Award under Section 34 of the Act. Since the last paragraph in the award holds that after issuing notice as contemplated under clause 10 read with clause 14 of the agreement dt.23-08-2003, the petitioners are liable to be evicted, and since it is not disputed that the respondents had issued notice dt.24-08-2010 to the petitioners in compliance with the said condition in the Award, the petitioners cannot resist the E.P. The Court below has correctly considered the legal position and rightly held that the petitioners cannot be allowed to misconstrue the award.

20. I see no error of jurisdiction in the order passed by the Court below.

21. The Civil Revision Petition is without any merit and the same is accordingly dismissed. No costs.

22. As a sequel, the miscellaneous petitions

pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-07-2015

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