

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 20TH DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.P. No.651 of 2017

In the matter of Arbitration and  
Conciliation Act, 1996

and

In the matter of Arbitration  
Agreement dated 13.06.2013 with  
MTG Enterprises.

1. Mrs.S.A.Salamath Begum,  
W/o.late A.A.Wahab,  
No.37/A-1, Mc Nicholas Road,  
Chetpet, Chennai-600 031
2. Mr.A.A.Abdul Khaliq,  
S/o.late A.A. Wahab,
3. Mr.A.A.Abdul Raziq,  
S/o.late A.A.Wahab,  
2 & 3 are at No.37/A-1,  
Mc.Nicholas Road,  
Chetpet, Chennai-600 031.
4. Mr.Mafaz Mohammed,  
S/o.Mr.S.A.G.Syed Abdul Kader,  
No.5, First Street, Wallace Garden,  
Chennai-600 006.
5. Mrs.Zahira Shaw,  
W/o.Mr.Sathak Ahamed Shaw,  
No.33, Beerabathiran Street,  
Nungambakkam, Chennai-600 034.
6. Mrs.Fathimuthu Fakiha,  
W/o.Mr.Zarook Syed Shah,  
No.13, Jaganathan Street,  
Nungambakkam, Chennai-600 034.

7. Mrs.Fazeela Shafiq,  
W/o.Mr.Shafiq Mohamed Shah,  
No.3, Rutland Gate Second Street,  
Chennai-600 006.

8. Mrs.Naseema Beevi,  
W/o.Late M.S.Hameed,

9. Mr.Shafiq Mohammed Shah,  
S/o.Late M.S.Hameed,

10. Mr.Sathak Ahmed Shaw,  
S/o.late M.S.Hameed,

11. Mr.Zarook Syed Shah,  
S/o.late M.S.Hameed,

12. Mrs.Kathijathu Nasreen,  
W/o.Mr.Mafaz Mohamed,

13. Mrs.Aminath Sithi Mariam,  
W/o.Mr.Ahamed Imran,

14. Dr.Faiza Hameed,  
W/o.Mr.Mohammed Nazim,  
8 to 14 are at No.33,  
Veerabathiran Street,  
Nungambakkam, Chennai-600 034.  
(Petitioners 1 to 8 and 10 to 14,  
rep. by their duly constituted by  
their power agent, Mr.Safiq Mohammad Shah)  
No.33, Veerabathiran Street,  
Nungambakkam, Chennai-600 034.

... Petitioners

-Versus-

Ms.M.Aruna,  
Proprietrix,  
M/s.MTG Enterprises,  
No.4, 5th Main Road,  
Kannan Nagar, Madipakkam,  
Chennai-600 091.

... Respondent

Original petition praying that this Hon'ble Court be pleased to appoint a Sole Arbitrator and decide the disputes that have arisen between the petitioners and the respondent under the Arbitration Agreement dated 13.06.2013.

This Original Petition coming on this day before this Court for hearing the court made the following order:-

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act for appointment of an Arbitrator.

2. The case of the petitioner is that they had leased out premises to the respondent for running retail outlet in a Mall. The lease agreement was signed between the petitioners, property developer and the respondent.

3. There have been disputes between the parties, which culminated in collateral proceeding before Rent Controller, XV Small Causes Court, Chennai.

4. There is an arbitration clause in the lease agreement dated 13.03.2016, which reads as under:

**SECTION 17: ARBITRATION**

*"17.1 All disputes and differences between the parties hereto in any way touching or*

*concerning the said leased portion or the interpretation scope or effect of any of the terms and conditions of any agreement and/or agreements entered into between the parties hereto or as regards the rights and liabilities of the parties hereto shall be referred to arbitration and any dispute that cannot be resolved mutually shall be referred to a panel of three arbitrators mutually appointed by the Lessor and the Lessee and the same shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any other statutory modification or enactment thereto for the time being in force."*

5. Earlier, O.A.No.752 of 2018 was filed under Section 9 of the Arbitration and Conciliation Act, 1996 by the applicant. O.A.No.752 of 2018 was allowed by this Court.

6. However, on appeal before the Division Bench, the petitioner was directed to withdraw the application with liberty to workout the remedy before the appropriate forum.

7. The learned counsel for the petitioner submits that the respondent has vacated the premises but is in arrears of rents.

8. The respondent submits that she is in possession of the property and therefore, the petitioner ought to continue to provide amenities and an application for restoration of amenities is pending before Rent Control Court.

9. The Counsel for the respondent submits that the respondent is in possession of the property and therefore, issue relating to renting of immovable property, cannot be subjected to arbitration.

10. The learned counsel for the respondent submits that developers is also not a party to the proceeding and therefore no meaningful arbitration can be initiated in the absence of a necessary party.

11. *Per contra*, the counsel for the petitioner submits that the developer has exited from the agreement and is therefore not a necessary party.

12. The learned counsel further submits that the rent control proceeding for restoration of amenities is academic as the respondent is no longer in possession of the leased property as the respondent has vacated the premises. Learned

Counsel further submitted that retail shop has been leased out to a new tenant who is currently in occupation.

13. I have considered the arguments advanced. The petitioner is merely seeking an order for an appointment of an arbitrator to decide the claim of the petitioner regarding rental arrears in view of the changed circumstances. The applicant cannot recover the arrears of rents in a rent control proceeding. Therefore, there is no harm in appointing an arbitrator to resolve disputes relating to rent arrears.

14. Arbitrator may not decide the factual aspect as to whether the respondent continues to be in possession of the retail outlet or not or whether the petitioner should continue to provide amenities which is a subject matter before the rent controller.

15. I am therefore of the view that a Retired District Judge, be appointed as an arbitrator to resolve the dispute relating to the rental arrears alone. It is open for the respondent to make out a counter claim, if advised.

16. Accordingly, Mrs.M.Rajalakshmi, retired District Judge, residing at No.3B, Ramaniyam Jeganath, Sivasami Avenue, M.G.R.Road, Palavakkam, Chennai-41, is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* between the parties.

17. She may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of this order.

18. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses.

19. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

20. Accordingly, this original petition is allowed.

Sd/-C.S.N.J

20.09.2018

//Certified to be a true copy//

Dated this the        day of                                2018  
JJ 13/12/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.