

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2018

DELIVERED ON : 12.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

Q.P.No.669 of 2016

S.N.Sridharan

.. Petitioner

Vs

Chitra Ashokan

.. Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 21.9.2015 which was received by the petitioner on 6.10.2015.

For Petitioner : M/s.Sudharshana Sundar

For Respondent : Mr.M.Udhayakumar

ORDER

The instant Original petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 21.09.2015 passed by the Arbitral Tribunal against him.

2. The petitioner is the claimant before the Arbitral Tribunal and he made the following claims against the respondent:-

(a) To declare the notice dated 17.07.2014 issued by the respondent to hand over possession after the lapse of license period as illegal and void.

(b) To declare that the petitioner is a Statutory tenant and is liable to be evicted only under due process of law.

(c) To direct the respondent to pay compensation for causing loss to the business of the petitioner to the tune of Rs.50,00,000/- and

d) To direct the respondent to pay a compensation of Rs.50,00,000/- for harming the reputation and causing mental agony to the petitioner towards the cost of the claim and

e) To pay the costs of the claim.

3. The respondent also made a counter claim before the Arbitral Tribunal:

(a) to direct the petitioner to handover vacant possession as per Deed of license

(b) to pay arrears of license fee of Rs.30,000/- per month from 20.09.2013 for six months totalling Rs.1,80,000/- with interest at 18% per annum till the date of payment

(c) to pay Rs.50,000/- per month from 20.03.2014 till handing over the land and godown with interest at 18% per month

(d) to pay Rs.30,00,000/- due under MOA plus 18% p.a

(e) to pay compensation of Rs.50,00,000/- towards damages for causing loss and reputation by lodging false complaint and dragging her to police station and another sum of Rs.50,00,000/- for mental agony with interest.

4. The Arbitral Tribunal based on the pleadings of the parties framed the following issues for consideration:

(a) Whether the petitioner is a licensee or a statutory tenant?

(b) Whether the petitioner is liable to be evicted and hand over vacant possession of the property to the respondent as per memorandum of agreement dated 20.09.2013?

(c) Whether there is any breach of agreement and if so, by whom ?

(d) Whether the parties are entitled to compensation as claimed ?

(e) Whether the petitioner is liable to pay Rs.30,000/- per month from 20.09.2013 to 19.03.2014 totalling Rs.1,80,000/- with interest at 18% per annum as claimed by the respondent for use and occupation ?

(f) Whether the petitioner is liable to pay damages for use and occupation from 20.03.2014 till the date of handing over the land at the rate

of Rs.50,000/- per month with interest at 18% per annum as per clause 21 of the Memorandum of Agreement ?

(g) Whether the respondent is entitled for the balance amount as per clause 13 of the memorandum of agreement ?

(h) To what reliefs are the parties entitled to ?

5. The learned Arbitrator passed an Award dated 21.09.2015 after considering the pleadings of the parties and materials available on record. Under the Arbitration Award dated 21.09.2015, the claim of the petitioner was rejected in toto and the counter claim of the respondent was partially allowed.

6. The Award directed the petitioner to pay the respondent

(i) a sum of Rs.30,00,000/- with interest at 9% per annum from the date of default till date of payment.

(ii) a sum of Rs.30,000/- per month as license fee from 20.09.2013 for six months amounting to Rs.1,80,000/- with interest at 9% per annum till the date of payment.

(iii) a sum of Rs.35,000/- per month towards damages for use and occupation of the land from 20.03.2014 till handing over the land and occupation with interest at 9% per annum and further directed

(iv) to hand over the possession of the land and godown to the respondent.

The parties were also directed to bear the respective costs.

6. Aggrieved by the Award dated 21.09.2015 passed by the Arbitral Tribunal comprising of three Arbitrators, the petitioner/claimant whose claim has been rejected has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996.

7. Heard Mrs. Sudharshana Sundar, learned counsel for the petitioner and Mr.M.Udhayakumar, learned counsel for the respondent.

8. Mrs.Sudharshana Sundar, learned counsel for the petitioner submitted that the petitioner is a statutory tenant and therefore, protected by the provisions of Tamil Nadu Building Lease and Rent Control Act. The learned counsel for the petitioner drew the attention of this Court to the Memorandum of Agreement dated 20.09.2013 and referred to the following paragraphs in the said Memorandum of Agreement:

“Whereas the godown of the partnership firm situated at No.33, Sastha Nagar, Thathan Kuppam, Villivakkam, Chennai 49 was originally taken on lease from Mr.Subramanisha by party of first part on

10.03.1989 for the purpose of storing the gas cylinders. The said Mr.Subramanisha put up super structure in the form of godown by obtaining planning permission dated 02.04.1989 and let out the said land and godown to the party of first part and the party of first part was said to have been paying the rents to Subramani Sha. The said Subramani Sha died on 18.05.1993 and his wife Saraswathi Bai died on 03.07.1993. Thereafter Deed of Partition dated 02.05.1997 was effected inbetween the legal heirs of Subramani Sha and registered as Doc. No.1629 of 1997 in S.R.O. Sembium. The above said land and godown was allotted to his son (1) Gopi Sha, daughters (2) Rajeswari Bai, (3) Kasthuri Bai, (4) Manjula Bai and (5) Nirmala Bai. They were not able to manage the property jointly and they appointed a Power of Attorney Agent namely Mr.Kasi Sha under a registered Deed of Power of Attorney dated 03.02.1999 and registered as Doc.No.38 of 1999 in Book No.4 in the Office of the Sub-Registrar, Periamet.

The said Kasi Sha has sold the said property, the land and godown to the party of second part Mrs.Chitra Ashokan under a registered Sale Deed dated 06.01.2003 and registered as Doc. No.26 of 2006 in the office of Sub-Registrar, Villivakkam. Thus the party of second part has become the absolute owner of the property measuring 6670 Sq.ft with super structure namely the godown measuring 899 Sq.ft and taken physical possession of the property. The party of

second part has effected name transfer in all the records namely Property Tax, Water and Sewerage Tax, Revenue records etc.,.

Whereas the original lease agreement entered into between party of first part and Subramani Sha was only for a period of ten years from 01.04.1989 with an option to renew for a further period of five years. However the option to renew the lease was not exercised by both the parties. The party of first part was continuing the business without any renewal of lease upto 05.01.2003.”

9. According to the learned counsel for the petitioner, the petitioner has been in possession of the property ever since 10.03.1989 as a tenant and hence, the petitioner cannot be evicted, except by due process of law as contemplated under the provisions of the Tamil Nadu Building Lease and Rent Control Act. According to her, the learned Arbitral Tribunal cannot pass an eviction order against the petitioner as he was a statutory tenant.

10. The learned counsel for the petitioner also drew the attention of this Court to the reply dated 31.07.2014 sent by the petitioner's counsel to the notice dated 17.07.2014 sent by the respondent's counsel clearly inducting that the petitioner is a tenant of the property ever since 1989 and he is not a licensee as claimed by the respondent. The learned counsel for

the petitioner referred to the decision of the Hon'ble Supreme Court in the case of *Booz Allen And Hamilton Inc. vs. SBI Home Finance Limited and Others* reported in (2011) 5 SCC 532, and submitted that disputes arising out of a lease agreement is a non-arbitrable dispute. Paragraph 36 of the said Judgment is extracted hereunder:

“ 36. The well-recognised examples of non-arbitrable disputes as (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matter; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.”

Relying upon the above referred decision of the Hon'ble Supreme Court cited supra, the learned counsel for the petitioner would submit that the eviction proceedings cannot be adjudicated by the learned Arbitral Tribunal and therefore, the Award directing the petitioner to handover vacant possession of the property to the respondent is erroneous and not in accordance with law.

11. The learned counsel for the petitioner drew the attention of this Court to paragraph 12 of the claim statement filed by the petitioner before the learned Arbitral Tribunal which reads as follows:

“12.The agreement dated 07.11.2005 will show that only a sum of Rupees Five lakhs have been paid to the claimant and the respondent agreed to contribute 26 lakhs in the partnership, in the event of approval from IOCL thus the MOU dated 20.09.2013 was entered into by the claimant under the pressure of his agency being terminated. The claimant states that the claimant had been paying Rs.30,000/- Rupees thirty thousand monthly towards interest of the amount received from the respondent including Rs.6,500/- Rupees Six thousand and five hundred only being the rent for the godown till MOU was signed. As already stated in order to avoid termination of the gas agency the claimant had to enter in a above MOU and also the Deed of license, hence the claimant is filing the claim”

12. According to the learned counsel for the petitioner, only to avoid termination of the gas agency, the petitioner had entered into Memorandum of Agreement dated 20.09.2013 and also Deed of license dated 20.09.2013 with the respondent, even though the petitioner is a statutory tenant ever since 1989. Further, the learned counsel for the petitioner submitted that only a sum of Rs.5,00,000/- was paid by the respondent to the

petitioner and the Memorandum of Agreement and Deed of license were entered into, under the pressure of his agency getting terminated. Therefore, according to the petitioner, the learned Arbitral Tribunal ought to have allowed the claim and ought not to have partially allowed the counter claim of the respondent which included the direction to the petitioner to handover possession of the property to the respondent.

13. Per contra, Mr.M.Udhayakumar, learned counsel for the respondent would submit that the petitioner is only a licensee and not a statutory tenant. He drew the attention of this Court to the Memorandum of Agreement dated 20.09.2013 as well as the Deed of license dated 20.09.2013 entered into between the petitioner and the respondent. In the Memorandum of Agreement dated 20.09.2013, the learned counsel referred to the same paragraph which was relied upon by the learned counsel for the petitioner. The learned counsel referred to the following sentence in the Memorandum of Agreement which the learned counsel for the petitioner did not refer to. The relevant portion referred to by the learned counsel for the respondent under the Memorandum of Agreement reads as follows:

“ After purchase of property by the party of second part, the lease agreement with Subramani Sha has demised and came to an end. There is no lease agreement in respect of the land and godown from

2003 onwards i.e. from the date of purchase by the party of second part.”

Referring to the above mentioned passage, under the Memorandum of Agreement dated 20.09.2013, the learned counsel would submit that the respondent who is the purchaser of the property under a registered Sale Deed dated 06.01.2003 never considered the petitioner as a tenant and the petitioner was only a permissive occupant as evidenced from the Deed of license dated 20.09.2013 entered into between the petitioner and the respondent.

14. The learned counsel for the petitioner drew the attention of this Court to the recitals of the Deed of license dated 20.09.2013. It is mentioned that the licensor namely the respondent is the absolute owner of the property situated at 33 Sastha Nagar, Thathan Kuppam, Villivakkam, Chennai 49 measuring 6670 Sq.ft on which there is a superstructure namely the godown measuring 899 sq.ft. The licensee who is the petitioner herein requested the licensor/the respondent herein to give license to use the godown for storing LPG cylinders for the period of six months and the licensor agreed to give license with effect from 20.09.2013 upto 20.03.2014. According to the learned counsel, the license Deed dated 20.09.2013 would clearly reveal that the petitioner was only a licensee under the respondent.

He also submitted that under the Memorandum of Agreement dated 20.09.2013, it is made clear that the lease entered into by the petitioner with the previous vendor of the respondent has also come to an end and the lease does not subsist anymore from 2003 onwards i.e., from the date of purchase of the property by the respondent.

15. The learned counsel for the respondent would further submit that a sum of Rs.25,00,000/- was paid to the petitioner by the respondent in order to induct him as a partner in the gas distributorship business of the petitioner. According to the respondent, the petitioner has also not established either by documentary and oral evidence that the said sum was repaid to the respondent with interest. Therefore, according to him, the learned Arbitral Tribunal has rightly rejected the claim made by the petitioner and partially allowed the claim made by the respondent.

16. This Court after having considered the materials available on record and after hearing the submissions of the respective counsels observes the following:

a. the petitioner was in financial need and found it difficult to run the gas distributorship agency which was evidenced by the letters of the petitioner dated 09.10.2002, 24.02.2002 and 30.06.2004 addressed to Indian Oil Corporation Limited.

b. The petitioner has entered into Deed of Agreement dated 06.10.2002 with the respondent and agreed to induct the respondent as a partner in the gas distributorship agency on receipt of a sum of Rs.25,00,000/- from the respondent. The petitioner wanted to induct the respondent as a financial partner only for the purpose of smooth functioning of the gas distributorship agency.

c. Indian Oil Corporation Limited by their letter dated 10.03.2003 has also intimated to the petitioner that after considering the performance of the petitioner, they have no plans to accept the proposal of the petitioner to induct the respondent as a partner in the distributorship business.

d. In all the communications made by the respondent, the petitioner was never considered as a tenant but the petitioner was considered only as a licensee.

e. Memorandum of Agreement dated 20.09.2013 makes it clear that there was no renewal of the lease in favour of the petitioner after 05.01.2003 and the lease agreement with the previous owner of the property Subramanisha has also come to an end from that date. It is also made clear that from the date of purchase of the property by the respondent, the lease in favour of the petitioner executed by the previous owner Subramanisha has also come to an end. As per the recitals to the

Memorandum of Agreement, it is made clear that the petitioner has become a permissive occupant of the premises and has agreed to pay license fee/ fee for using the godown as a permissive occupant for a sum of Rs.30,000/- per month.

f. The Deed of license to use of land and godown dated 20.09.2013 for the period from 20.09.2013 to 20.03.2014 also makes it clear that the petitioner was only a licensee under the respondent.

17. The petitioner has not been able to disprove the existence of Memorandum of Agreement dated 20.09.2013 and the Deed of license for the use of land and godown dated 20.09.2013 before the learned Arbitrator. No acceptable evidence has been placed by the petitioner to disprove the existence of those documents. The petitioner has referred the dispute to Arbitration, only in accordance with the Arbitration clause contained in the Memorandum of Agreement dated 20.09.2013 as well as the Deed of license for the use of land and godown dated 20.09.2013. Having initiated arbitration in accordance with the arbitration clause containing in the said agreement, the petitioner cannot now dispute the existence of the said agreement. The respondent purchased the property in 2003 which is also not disputed by the petitioner. This Court has perused and examined the documents filed before the Arbitrator, and the Arbitral Award. The Arbitrator has framed eight issues

and each and every issue has been duly considered by the Arbitrator in accordance with law. The learned Arbitrator has given a clear finding in paragraph 12 of the Award that the petitioner is only a licensee and not a lessee. The Arbitrator has objectively examined all the documents filed before him and only thereafter rejected the claim of the petitioner and partially allowed the counter claim of the respondent. Each and every ground raised by the petitioner under Section 34 of the Arbitration and Conciliation Act 1996 was duly considered by the Arbitral Tribunal in the detailed and well reasoned Award.

18. The scope for interference under Section 34 of the Arbitration and Conciliation Act, 1996 is very limited. Unless and until the petitioner is able to establish that the Award passed by the Arbitral Tribunal is arbitrarily perverse and patently illegal, this Court cannot interfere with the Award dated 21.09.2015 under Section 34 of the Arbitration and Conciliation Act, 1996. If the view taken by the Arbitral Tribunal is a plausible view, this Court under Section 34 of the Arbitration and Conciliation Act, 1996 cannot substitute its own view for the view taken by the learned Arbitral Tribunal. This Court does not find any illegality in the Award passed by the Arbitral Tribunal.

19. The Hon'ble Supreme Court in a Catena of decisions starting from *Renusagar Power Company Ltd vs. General Electric Company 1994 Supp (1) SCC 644* to the recent *Associated Builders Vs DDA (2015) 3 SCC 49* has held only under the following grounds the Arbitral Award can be challenged under Section 34 of the Arbitration and Conciliation Act:

- (a) *Procedure contemplated under Arbitration and Conciliation Act was not followed by the Arbitrator.*
- (b) *The Arbitral Award is a non speaking Award.*
- (c) *The Arbitrator has transgressed his jurisdiction.*
- (d) *The Arbitral Award is in conflict with the public policy of India.*
- (iii) *An award would be regarded as conflicting with the public policy of India if:-*
 - (a) *it is contrary to the fundamental policy of Indian law, or*
 - (b) *it is contrary to the interests of India,*
 - (c) *it is contrary to justice or morality,*
 - (d) *it is patently illegal, or*
 - (e) *it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.*
- (iv) *An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if*
 - (a) *it disregards orders passed by superior courts, or the binding effect thereof, or*
 - (b) *it is patently violative of statutory*

provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a “judicial approach”, i.e. has not acted in a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have been violated.

(v) Insofar the “patent illegality” has to go to the root of the matter. Trivial illegality is inconsequential.

(vi) Additionally, an award could be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law,

Or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise

- unable to present his case, or*
- (d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or*
- (e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or*
- (f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or*
- (g) the award contravenes the Act, or*
- (h) the award is contrary to the contract between the parties.*

(vii) "Perversity", as a ground for setting aside an arbitral award, has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which

- (a) the findings, in the award, are based on no evidence, or*
- (b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or*
- (c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.*

(viii) *At the same time,*

(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as “perverse”,

(b) if the view adopted by the arbitrator is a plausible view, it has to pass muster,

(c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.

(ix) “Morality” would imply enforceability, of the agreement, given the prevailing mores of the day. “Immorality”, however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

20. The petitioner has not satisfied any of the grounds mentioned above to interfere with the Award dated 29.01.2015. Hence, the Original Petition shall stand dismissed. However, there shall be no order as to costs.

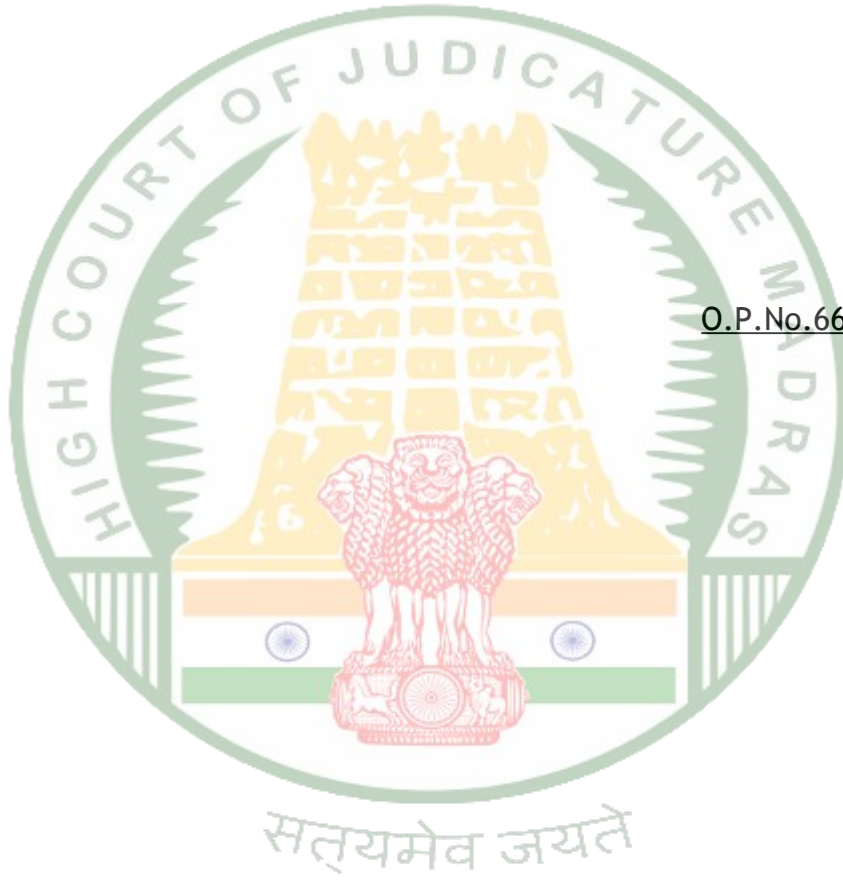
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