

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

**O.P.No.40 of 2020
and O.A.No.36 of 2020**

M/s Unittas Multi Speciality
Hospital Private Limited,
Rep.by its Director,
Mr.Balu,
Regd.Office at New No.16(Old No.17),
M.K.Reddy Street, West Tambaram,
Chennai 600 045.

... Petitioner/Applicant
in O.P.No.40 of 2020
and O.A.No.36 of 2020

Vs

P.Karthik

... Respondent
in O.P.No.40 of 2020
and O.A.No.36 of 2020

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Prayer in Original Petition No.40 of 2020: Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a Retired High Court Judge as Sole Arbitrator as this Court may deem fit and proper to arbitrate the dispute that has arisen between the parties.

Prayer in Original Application in 36 of 2020: Original Application has been filed under Order 14, Rule 8 of O.S. Rules and Section 9(ii)(e) of the Arbitration and Conciliation Act, 1996 praying to grant interim injunction restraining the respondent, his men, agents or any one acting on his behalf from interfering with the peaceful possession, running and enjoyment of the Hospital namely, M/s Unittas Multi Speciality Hospital Private Limited more fully set out in the schedule to the judge's summons with an existing utility Genset-Kirloskar-12.5 KV and not to dispossess the applicant without due process of law, pending arbitration proceedings.

For Applicant : Mr.N.C.Ramesh,
Senior Counsel for
Mr.P.Arivudaiyanambi
in O.P.No.40 of 2020
and O.A.No.36 of 2020

For Respondent : Mr.Omprahash,
Senior Counsel for
Mr.S.Arivazhagan
in O.P.No.40 of 2020
and O.A.No.36 of 2020

ORDER

This original petition has been filed for appointment of arbitrator in respect of the agreement entered into between the parties and Original application has been filed praying to grant interim injunction restraining the respondent, his men, agents or any one acting on his behalf from interfering with the peaceful possession, running and enjoyment of the Hospital namely, M/s Unittas Multi Speciality Hospital Private Limited more fully set out in the schedule to the judge's summons with an existing utility Genset-Kirloskar-12.5 KV and not to dispossess the applicant without due process of law, pending arbitration proceedings.

2. The learned counsel for the applicant submitted that as the respondent failed to honour the obligation contained in the agreement, there arose a dispute between the parties. Hence the matter has to be referred before the arbitration.

3. The learned counsel for the respondent submitted that the issue involved in this matter is not arbitrable and his main contention is that the issue arose between the parties under the agreement to be decided by the

competitive authorities alone and not by the arbitral tribunal. He further submitted that the applicant has not committed willful default in payment of rents. Therefore, he has already filed an application under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act 2017. Hence it is the contention that the arbitral tribunal cannot decide the dispute and the dispute cannot be referred to arbitration.

4. It is the contention of the learned counsel appearing for the applicant that on an earlier occasion, similar application has been filed before this Court for appointment of arbitrator. This Court by order dated 10.12.2019 in O.P.No.439 of 2019 has held that there is an arbitral clause which is binding on the parties and is only structured/step ladder arbitration. In such view of the matter, the parties are directed to appear before the Mediation and Conciliation Centre, in the event of failure to arrive at any settlement in the Mediation Centre, liberty is granted to the applicant to approach this Court with fresh similar application. The learned Judge of this Court has already held that the dispute is arbitrable. Now the respondent has taken a contrary view by contending that the dispute is not an arbitrable its only a special statute, which will govern the landlord tenant relationship.

Hence such contention cannot be accepted. Admittedly, the order of this Court has not been put to challenge. There is no dispute with regard to the arbitration clause contained in the agreement. Therefore, it is their contention that the dispute is now with regard to the certain obligations imposed on either sides. Lease is for a period of nine years. The main dispute is with regard to the failure to perform such an obligation on the part of the parties. The dispute can be very well referred to the arbitration, the contention of the respondent that the matter cannot be arbitrable has no legs to stand. Hence prayed for allowing for appointment of arbitrator.

5. Whereas, Mr.Om Prahash, learned Senior Counsel submitted that merely because some concession was shown in the earlier application that cannot be put against the party when the statute provides certain rights in favour of the parties on the basis of the special statute. Admittedly the agreement is a lease agreement, he has failed to pay the rent and committed wilful default and hence it is the contention that the matter cannot be arbitrable and the same is governed by Sections 7 and 10 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act 2017.

6. I have gone through the entire materials. There is no dispute with regard to the agreement entered into between the parties. Similarly, on the earlier occasion, the applicant has filed a similar application for appointment of arbitrator in O.P.No.439 of 2019. This Court by order dated 10.12.2019 has already held that the parties are governed by the arbitral agreement and the contract entered into between them and has held that the arbitration has to be resorted after going for mediation. Para 4 of the order reads as follows:-

“ 4. A perusal of the Arbitration agreement between the parties, which is in the form of a covenant, brings to light that it is a structured / step ladder arbitration. Being a step ladder arbitration, it is necessary that the parties should first approach 'Tamil Nadu Mediation and Conciliation Centre under the aegis of this Court' . ('TNMCC' for brevity) and only in the event of failure of conciliation before TNMCC, the question of appointment of an arbitrator will arise. The exchange of notices between the petitioner and the respondent regarding invocation of the arbitration agreement are 07.05.2019 and 20.05.2019 respectively i.e., 07.05.2019 is the notice from the petitioner and 20.05.2019 is the reply from the respondent. A perusal of the two reveal that both parties have proceeded on the basis that there

would be an appointment of Arbitrator directly, whereas the arbitration clause provides for the matter to be placed before TNMCC, as first step in the step ladder arbitration clause”.

7. This Court while passing such an order took note of the exchange of notices between the parties and held that the dispute is referable to arbitration. It is curious to note that the above order has not been put to challenge by the respondent. Now the respondent has taken a defence to the effect that the issue is covered under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act 2017 is not referable to the arbitration in view of the law laid by this Court. No doubt in the case of **NATRAJ STUDIOS (P) LTD., Vs. NAVRANG STUDIOS AND ORS.**, (MANU/SC/0477/1981), the Apex Court has held that as the dispute between the parties arisen out of possession of the licensed demised premises, only the Court of Small Causes has to decide the matter and the dispute cannot be decided as held by the Apex Court in the case of **BOOZ ALLEN AND HAMILTON INC. Vs. SBI HOME FINANCE LTD. AND ORS. (2011 5 SCC 532)** that the 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.

8. The learned counsel further placed reliance upon Judgment in the case of ***Himangni Enterprises Vs Kamaljeet Singh Ahluwalia*** MANU/SC/1307/2017 in which it is held that where the Transfer of Property Act, 1882 applied between landlord and tenant, disputes between the said parties would not be arbitrable and also referred to the judgment in the case of ***Vidya Drolia and others Vs Durga Trading Corporation 2019 SC***. In given case dispute is only with regard to the certain obligations as per the contract with regard to the nature of the area, square foot extra. Though it is the contention of the learned counsel appearing for the respondent that rent has not been paid whereas the contention of the learned counsel appearing for the applicant that agreed rent has to be paid only on fulfillment of the contract. In such view of the matter, this Court is of the view that the dispute is with regard to the obligation of the agreement

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9. In such view of the matter when the dispute appears to be arisen out of the contract as long as there is no special protection under Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants

Act 2017 for both sides and the dispute appears to be mainly on the terms of the contract. The obligation to be performed by each of the parties, referring such dispute to the arbitrator will not take away the rights of the both sides. It is also well open to the respondent to make a dispute in the way of the counter claim even for default of rents said to have been committed by the applicant and seek decree of eviction also. This Court is of the view that the matter has to be referred to arbitration. At this stage both sides submitted that Mr.P.Shanmugam, retired Judge of this Court, New No.204, T.T.K.Road, Teynampet, Chennai 600 018 may be appointed as Arbitrator. Accordingly, Mr.P.Shanmugam, retired Judge of this Court is appointed as arbitrator and shall dispose the matter within a period of six months from the date of applicant enter into reference and it is open to the parties to raise all the disputes including the counter claim of the respondent. As far as the interim relief is concerned, this Court is of the view that the arbitrator can resolve the dispute. The applicant can canvass their claim for interim measures under Section 17 of the Act before the learned Arbitrator. The learned Arbitrator is at liberty to fix the remuneration and the same shall be borne by the parties equally.

N. SATHISH KUMAR, J.

dpq

10. With the above observations, this Original Petition is allowed and accordingly original application is closed.

10.09.2020

Index: Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
dpq

Copy to:
Mr.P.Shanmugam,
Former Judge
New No.204, T.T.K.Road,
Teynampet, Chennai 600 018

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