

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24 / 08 / 2020

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.NO.747 OF 2018

Resham Mahtani

.. Petitioner

Vs.

Shabna Akmal

.. Respondent

PRAYER: Original Petition filed under Section 11(5) read with 10(2) of the Arbitration and Conciliation Act, 1996, seeking to appoint an Arbitrator to adjudicate upon the differences and disputes that have arisen between the parties hereto.

For Petitioner

:

Mr.R.Parthasarathy

For Respondent

:

Mr.G.Dakshinamurthy

ORDER

This Original Petition has been filed for appointing an Arbitrator to adjudicate upon the differences and disputes that have arisen between the parties out of a Leave and License Agreement.

2. According to the petitioner, she is the landlady. She entered into a Leave and License Agreement with the respondent on 17.10.2017, wherein the respondent has agreed to pay monthly license fee of Rs.63,000/- for the use and occupation of the Schedule premises. Since there is some default, the petitioner made repeated requests to the respondent to pay the same. On the other hand, the respondent has failed to comply with the contractual obligation cast upon her. Hence, the petitioner issued notices on 02.05.2018 and 05.06.2018 for settlement of the disputes through arbitration. Since no action is forthcoming from the respondent, the petitioner has filed the the present Original Petition.

3. Controverting the facts, the respondent filed counter and contended that the Original Petition seeking appointment of Arbitrator is not

maintainable as the jurisdiction lies before the Presidency Small Causes Court. In support of her contention, she relied on the judgments of the Hon'ble Supreme Court in **BOOZ ALLEN AND HAMILTON INC VS. SBI HOME FINANCE LIMITED [2011 (5) SCC 532]** and **NATRAJ STUDIOS VS. NAVRANG STUDIOS [1981(1) SCC 523]**.

4.The learned counsel for the petitioner would contend that the Hon'ble Supreme Court in **M/S.DURO FELGUERA S.A VS. M/S.GANGAVARAM PORT LIMITED [2017 (9) SCC 729]** has held that when there is an arbitration clause in the agreement, the concerned Court shall appoint an Arbitrator and shall minimise the intervention at the stage of appointing Arbitrator. The observation of the Hon'ble Supreme Court in the said judgment reads as follows:-

"The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see

is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11 \(6A\)](#) ought to be respected. "

5.I have considered the submissions made on either side and perused the materials available on record.

6.It is relevant to look into the judgment of the Hon'ble Supreme Court in **BOOZ ALLEN AND HAMILTON INC VS. SBI HOME FINANCE LIMITED [2011 (5) SCC 532]** wherein it has been held as under:

"36.The well recognized examples of non-arbitrable disputes are : (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 matters; (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.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide : Black's Law Dictionary).

38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to sub-ordinate rights in personam arising from rights in rem have always been considered to be arbitrable. “

As per the above judgment, the tenant enjoys the statutory protection against eviction and the jurisdiction is specifically conferred on the Court constituted for the purpose of Rent Control matters.

7. Even in 1981, the Hon'ble Supreme Court (Three Judges Bench) speaking through Justice O. Chinnappa Reddy, in its judgment in ***NATRAJ STUDIOS's case (cited supra)*** has held that the jurisdiction of landlord - licensor and tenant, which falls under the exclusive jurisdiction of the Small Causes Court, ousted jurisdiction of other ordinary Civil Courts. The arbitration clause of the agreement to decide such dispute is excluded in view of the exclusive jurisdiction of the Rent Control Courts.

8. The Hon'ble Supreme Court in **UNITED INDIA INSURANCE COMPANY LIMITED Vs. HYUNDAI ENGINEERING AND CONSTRUCTION CO. PVT. LTD. [Civil Appeal No.8146 of 2018 dated 21.08.2018]** has referred to its judgment in **DURO FELGUERA's case (cited supra)** and held that the Court shall look into the arbitrability of the issue and then only can appoint an Arbitrator.

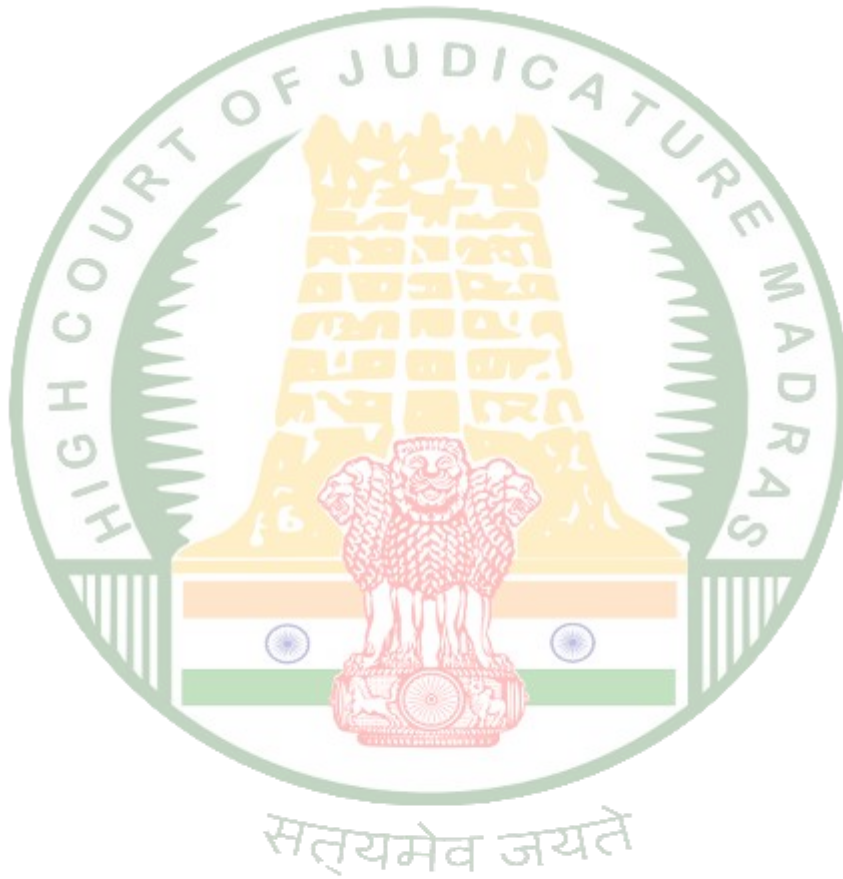
9. In the instant case, the matter is that of landlord and licensee which falls within the exclusive jurisdiction of the Small Causes Court. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court in **Natraj Studios's case (cited supra)** and **Booz Allen's case (cited supra)** arbitration is not maintainable. Hence, the Original Petition stands dismissed. No costs.

10. However, after pronouncing the above order, the learned counsel for the petitioner submits that they have proceeded with the matter under Rent Control Act and therefore, the subject matter has become infructuous.

11. The above statement made by the learned counsel for the petitioner is recorded.

24 / 08 / 2020

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