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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.10.2021

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THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Rev.Appl.No.118 of 2021

Johnsi Philip ..Petitioner/Respondent/Respondent/
Decree holder

Vs.

Mohammed Rizwan ..Respondent/Petitioner/Petitioner/
Judgement Debtor

Prayer: Review Petition filed under Section 114 r/w order XXXXVII Rule 1 of C.P.C., to review the order passed in C.R.P.No.12 of 2021 and dismiss the C.R.P.No.12 of 2021.

For Petitioner .. Mr.M.Kalyana Sundaram
Senior Counsel
for Mr.R.Vasudevan

For Respondent .. (Notice not issued)

ORDER

This Review Petition has been filed questioning the order, dated 23.07.2021 in C.R.P.No.12 of 2021.

2. There had been an agreement between the petitioner herein, who was respondent in C.R.P.No.12 of 2021 and the respondent herein, who was the petitioner in C.R.P.No.12 of 2021. In that particular agreement, it had been agreed between the parties that if there is a dispute, the said subject would be referred to arbitration.

3. The agreement was with respect to lease of a particular vacant land, in which, there was a shed. Disputes arose. The matter was referred to arbitration and an arbitral award was granted and Execution Petition was filed. At that stage, the Civil Revision Petitioner approached the Court questioning the award. This Court had, by order in the said C.R.P.No.12 of 2021, dated 23.07.2021, remanded the matter back to the learned District Munsif at Alandur to give a finding whether the property involved comes under the Tamil Nadu Buildings, Lease and Rent Control Act or whether it does not come under the said Act.



4. This Court had relied on a judgment on reference by the Hon'ble Supreme Court in Vidya Drolia Vs. Durga Trading Corporation, reported in (2021) 1 SCC 1.

5. Heard Mr.M.Kalyana Sundaram, learned Senior Counsel and also Mr.R.Vasudevan, learned Counsel for the petitioner.

6. On reference, owing to two separate differing judgments by two separate benches of the Hon'ble Supreme Court, a larger bench held that in a landlord/tenant dispute if the property is covered under special statute, then proceedings on the said property should proceed only under the Special Act. If not, then the parties can arbitrate on the issues if the agreement provides for that.

7. This would mean that if the property in the instant case comes under the purview of the Tamil Nadu Buildings, Lease and Rent Control Act, 1960, as amended or under the Amended Act, which is now in force, then the Special Act alone will apply in case disputes arise. If the property does not come under the Tamil Nadu Buildings, Lease and Rent Control Act, 1960, as amended or under the Amended Act now in force, then the parties can enter into an agreement giving an arbitration clause to decide disputes arising out of the agreement.

8. This is a question of fact, which this Court had directed the learned District Munsif to determine, namely the character of the property and whether it is covered under the Tamil Nadu Buildings, Lease and Rent Control Act, 1960 or not.

9. A reference has been made to another judgment in 2021 1 SCC 529, Suresh Shah Vs. Hipad Technology India Private Limited, more particularly to paragraph 18, which is extracted below:-

"18. In the backdrop of the above discussion, we are of the considered view that insofar as eviction or tenancy relating to matters governed by special statutes where the tenant enjoys statutory protection against eviction where under the Court/Forum is specified and conferred jurisdiction under the statute alone can adjudicate such matters. Hence in such cases the dispute is non-arbitrable. If the special statutes do not apply to the premises/property and the lease/tenancy created thereunder as on the date when the cause of action arises to seek for eviction or such other relief and in such transaction if the parties are governed by an Arbitration Clause; the dispute between the parties is arbitrable and there shall be no impediment



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whatsoever to invoke the Arbitration Clause. This view is fortified by the opinion expressed by the Coordinate Bench while answering the reference made in the case of Vidya Drolia wherein the view taken in Himangni Enterprises is overruled".

10. Even in the said portion, the Hon'ble Supreme Court had stated that they are in conformity with the decision in Vidya Drolia Vs. Durga Trading Corporation stated supra.

11. The question of fact has to be now determined by the learned District Munsif, Alandur to find out whether the property involved comes under the Tamil Nadu Buildings, Lease and Rent Control Act or not and thereafter, the learned District Munsif has to proceed further.

12. I had referred to the subsequent judgment Suresh Shah Vs. Hipad Technology India Private Limited referred above, inspite of the fact that explanation to Order 47 R 1 of C.P.C specifically states that even if a judgment referred in the course of the order is altered or modified or reversed by a superior Court, then a review will not lie. Anyway, since the order in Suresh Shah Vs. Hipad Technology India Private Limited had only confirmed the position in Vidya Drolia Vs. Durga Trading Corporation, the judgment given by me is only fortified and the Review Petition has to suffer an order of dismissal.

13. With the above said observations, the present Review Application is dismissed. Consequently, the connected miscellaneous petition i.e., C.M.P.No.14298 of 2021 is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

grs

To

The Principal District Munsif, Alandur.

+lcc to M/s.R.Vasudevan, Advocate, S.R.No.54493

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VSN-II (CO)
RGA(15/11/2021)