



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 08TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.572 of 2020

In the matter of Arbitration and  
Conciliation Act of 1996

and

In the matter of The Lease Agreement  
dated 19.11.2018.

M/s.True Sai Motors [P] Ltd.,  
Represented by its Managing Director,  
S.E.Palanivel,  
Office at 390/73 A. Cherry Road,  
Hasthampatty, Salem – 636 007.

. . . Petitioner

Versus

1. Dr.Ajay Venkatesh  
Son of R.Sarvothaman

2. Dr.Lalitha Ajay Venkatesh  
Wife of Dr.Ajay Venkatesan  
Both residing at 1-1-1, Thiruvalluvar Street,  
Subramanya Nagar, Suramangalam,  
Salem – 636 005.

. . . Respondents

Original Petition praying that this Hon'ble Court be pleased to appoint  
a sole arbitrator to go into the dispute between the petitioner and the  
respondent in respect of Lease Agreement dated 19.11.2018.

This Original Petition coming on this day before this court for hearing  
in the presence of Mr.M.Sriram, Advocate for the petitioner herein and  
Mr.A.V.Arun, Advocate for the respondents herein and upon reading the  
petition and the supporting affidavit of S.E.Palanivel, filed herein, it is  
ordered as follows:-



Nadu Street, Annathanapatty, Salem – 636 002 Mobile No.9865025011 be and is hereby appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall 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 the Order. It is open to the parties to raise all the disputes before the arbitrator including objections as per law.

iii] That the learned Sole Arbitrator appointed herein shall fix his fees and other incidental charges and the same shall be borne by the parties equally.

iv) That both parties hereto, shall bear their own costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,  
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE  
08<sup>th</sup> DAY OF JULY 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

(\*) Amended as per order dated 15.09.2021  
made in O.P.No.572 of 2020

Sd./- (22.09.2021)

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the      day of      2021.

COURT OFFICER(O.S.)

From 25<sup>th</sup> Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



SK

15.07.2021

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3

O.P. No.572 of 2020

ORDER:-

DATED: 08.7.2021

THE HON'BLE MR. JUSTICE  
N.SATHISH KUMAR

FOR APPROVAL: 04.08.2021

APPROVED ON : 04.08.2021  
22.09.2021

Copy to:

Mr.S.Jagannathan,  
(\*) **Sub Judge** [retired],  
Sole Arbitrator  
residing at 69/73, Nadu Street,  
Annathanapatty, Salem – 636 002.

Mobile No.9865025011



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4

**THE HIGH COURT OF JUDICATURE AT MADRAS**

Date 08.07.2021

CORAM:

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**O.P.No.572 of 2020**

M/s.True Sai Motors [P] Ltd.,  
Representated by its Managing Director,  
S.E.Palanivel,  
Office at 390/73 A. Cherry Road,  
Hasthampatty, Salem – 636 007.

. . . Petitioner

Versus

1. Dr.Ajay Venkatesh  
2. Dr.Lalitha Ajay Venkatesh

. . . Respondents

**PRAYER :** Petition filed under Section 11 [6] of Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to go into the dispute between the petitioner and the respondent in respect of Lease Agreement dated 9.11.2018.

For petitioner : Mr.M.Sriram

For respondents : Mr.A.V.Arun

**ORDER**

This Original petition has been filed for appointment of an arbitrator

<https://hcservices.ecourts.gov.in/hcservices/>

to resolve the dispute are arose between the parties in respect of a lease



agreement dated 19.11.2018.

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2. It is the contention of the petitioner that the contract is basically in the form of a lease deed wherein the parties have agreed to put up a construction and thereafter, the lease would commence from a certain point of time. However, before construction, the lease deed got cancelled due to dispute arise between lessor and lessee. Hence, seeks appointment of an arbitrator in pursuant to the so called lease deed.

3. In the counter, the main objection by the respondent is that he lease deed cannot be looked into since it is not registered and stamped and the arbitration clause will be commenced only after blossoming of relationship into lessor and lessee.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. The main contention of the learned counsel Mr.Sriram, appearing for the petitioner is that though the document is written as a lease deed and the same indicate that lessor and lessee relationship has not been created

and it is only a contract entered to create lease in future. Even in the



contract, the parties have agreed to refer the dispute to a sole arbitrator.

Therefore, the deed containing arbitration clause need not be registered as per the Indian Contract Act. Therefore, it is his submission that the question of registration of the document and stamp duty does not arise at all. Hence, prayed for appointment of an arbitrator.

6. The learned counsel Mr.Arun appearing for the respondents submitted that the clause containing in the contract for arbitration will not be applicable in the present case since the relationship has fructified as that of lessor and lessee. Only on such relationship blossomed, the dispute can be referred to arbitration. Other submission of the learned counsel Mr.Arun, is that though the document is styled as a lease deed, if a document is for a period more than one year, registration and stamp duty is compulsory. Without being satisfied with these conditions, the document cannot be looked into. In support of his contentions, he relied on the following judgments of the Apex Court :

**United India Insurance Company Limited  
and another Vs. Hyundai Engineering and  
Construction Company Limited and others reported  
in 2018 [17] Supreme Court Cases 607**



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**Marine Constructions and Engineering Limited**

reported in 2019 [9] Supreme Court Cases 209

**Dharmaratnakara Rai Bahadur Arcot**

**Narainswamy Mudaliar Chattram and other**

**Charities and others Vs. Bhaskar Raju and**

**Brothers and others** reported in 2020 [4] Supreme

**Court Cases 612**

7. The parties have entered into a lease agreement dated 19.11.2018. Wherein, the owner of the place is termed as a lessor and the applicant is termed as a lessee. The owner has agreed to construct certain construction and on completion of such construction, the property has to be given on lease. Though, the entire document is styled as a lease deed, on a perusal of the document, this Court is unable to accept the contention that the above document is a lease deed which create lessor and lessee relationship. It is only a contract to create a lease in future, on fulfilling certain conditions, i.e., putting up construction, prior to the commencement of the very lease. Relationship as lessor and lessee will commence from 01.08.2019, only on completion of construction as per the agreement. However, dispute is said to have arisen between the parties and the agreement was cancelled on 19.04.2019 itself.



8. (\*) **It is the case of the petitioner that a sum of Rs.40 lakhs has been paid,** towards construction while entering into the contract. The contention of the respondents is that they have also spent huge amount based on the above contract. Admittedly, the parties have agreed to refer the dispute to arbitrator. Therefore, when the entire contents of the documents harmoniously read, it will lead to a conclusion that it is a contract for creating jural relationship of lessor and lessee in future and it further indicate that lessor and lessee relationship has not been created on that date. It is only an agreement to transfer an interest in future, i.e., on 01.08.2019. Mere nomenclature of the document is not a decisive to conclude that the document is a lease deed. Otherwise, the intention of the parties has to be gathered from the document.

**(\*) Corrected as per order  
dated 20.07.2021 made in O.P.No.572 of 2020.**

**Sd./-(04.08.2021)**

**Assistant Registrar (O.S.II)**

9. The document is mere a contract to create a right from 01.08.2019 and not from the date of agreement, i.e., 19.11.2018. Therefore, merely because the document is styled as a lease deed, it cannot be said that the document require stamp duty and registration. Though in the judgment relied by the learned counsel for the respondent in **Garware Wall Ropes Limited Vs. Coastal Marine Constructions and Engineering Limited**



that when the document is not properly stamped and registered, it cannot be looked into for any other purpose, it can be impounded and stamp duty be collected. Admittedly, in this case, the question of stamp duty does not arise as the contract has been entered for transfer of interest in future. The relationship of lessor and lessee will take place only in future and not on the same day. In such view of the matter, the above judgment will not be applicable to the facts of the case. At the same time, the parties had agreed to refer the dispute to the arbitrator, merely because lessor and lessee terms have been used, it cannot be said that until the contract blossom into such relationship, the matter cannot be arbitrable. If such contention is accepted, the very object of the Arbitration and Conciliation Act will be defeated.

10. The agreement may be in the form of arbitration clause in a contract or in the form of a separate agreement. Therefore, when the parties have admittedly entered into a contract to create a future lease and in the above contract, they have agreed to refer the dispute. Therefore, the judgment relied by Mr.Arun in this regard reported in **United India Insurance Company Limited and another Vs. Hyundai Engineering and Construction Company Limited and others** reported in **2018 [17] Supreme Court Cases 607** is in a different context wherein the Apex Court

has held that clause in the insurance policy as to repudiation of claim and



the same cannot be arbitrable and cannot be referred to arbitration. The above judgment is not applicable to the facts of this case. s

11. Accordingly, it is ordered as follows:

i) that Mr.S,Jagannathan, District Judge [retired], residing at 69/73, Nadu Street, Annathanapatty, Salem – 636 002 Mobile No.9865025011 is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall 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 the Order. It is open to the parties to raise all the disputes before the arbitrator including objections as per law.

iii] That the learned Sole Arbitrator appointed herein shall fix his fees and other incidental charges and the same shall be borne by the parties equally.



parties to bear their own costs.

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Sd./-(N.S.K.J.)  
08.07.2021

//Certified to be true copy//

Dated at Madras this the      day of      2021.

COURT OFFICER(O.S.)

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