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Arb.O.P (Com.Div.) No.129 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.129 of 2022

1. Mr.M.Ghyaz Hashim
2. Mr.Sulaiman Zakir Ghyaz
3. Mr.Mohammed Zahan Ghyaz

... Petitioners

Vs.

1. Mr.Charles Vasanthakumar
Proprietor - M/s.Grace Services
S-2, 2nd Floor, Phase-I, Spencer Plaza
No.769, Anna Salai, Chennai - 600 002
2. M/s.Hotel Saravana Bhavan
Represented by its Partner Mr.R.Saravanan
No.19, Vadapalani Andavar Koil Street
Vadapalani, Chennai - 600 026

... Respondents

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator in terms of Clause 34 of the Lease Deed dated 15.03.2016, the letter dated 27.09.2017 assigning the Lease Deed and the Letters dated 15.03.2018 attorning the tenancy, to adjudicate the disputes between the petitioners and the respondents and to direct the respondents to pay costs.



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For Petitioners : Mr. Arun Anbumani

For Respondents : Mr.V.Jai Hari Sudhan
for Mr.K.Venkateswaran for R1

Mr.S.Giritharan for R2

ORDER

This order will now dispose of the captioned 'Arbitration Original Petition' ['Arb.OP' for the sake of brevity].

2. Mr.Arun Anbumani, learned counsel for three petitioners, Mr.V.Jai Hari Sudhan, learned counsel representing Mr.K.Venkateswaran, counsel on record for first respondent and Mr.S.Giritharan, learned counsel for second respondent are before this Court.

3. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 28.03.2022, which reads as follows:

'Captioned 'Arbitration Original Petition' ('Arb.OP' for the sake of brevity) has been presented in this Court on 28.02.2022 under Section 11(5) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' which shall hereinafter be referred to as 'A and C



Act' for the sake of brevity with a prayer for appointment of a sole Arbitrator.

2. Mr.Arun Anbumani, learned counsel for three petitioners who is before this Court submits that captioned Arb.OP is predicated on a clause in a Lease Deed dated 15.03.2016. To be noted, this is Clause 34. It is also submitted that this Lease Deed has to be read in conjunction with letter dated 27.09.2017 and another letter dated 15.03.2018 pertaining to assignment of Lease Deed and attornment of tenancy. This Lease Deed dated 15.03.2016 and two letters dated 27.09.2017 and 15.03.2018 shall be collectively referred to as 'primary contract' for the sake of convenience. Clause 34 of primary contract reads as follows:

“34. Any claim, dispute or difference of any kind whatsoever arising out of or in connection with this Lease Deed or the breach thereof shall be aimed to be settled amicably through good faith discussions by the parties. If amicable settlement is not found within a period of 30 days from the date of raising the dispute, all such claims, disputes and differences shall be finally resolved by arbitration conducted by a sole arbitrator appointed by the Parties under the provisions of the Arbitration and Conciliation Act, 1996 and any rules framed thereunder, (including amendments/enactments thereof). The venue of arbitration shall be at Chennai and the language shall be English. Judgment on any Arbitration Award shall also be entered in



a Court of competent Jurisdiction at Chennai.'

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3. *Clause 35 is also of relevance and the same reads as follows:*

'35. This Agreement shall be governed by and construed in accordance with the laws of India and both the Parties hereby submit to the exclusive jurisdiction of the Courts of Chennai.'

4. *The aforementioned clauses serve as arbitration agreement i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act, is learned counsel's say.*

5. *Learned counsel submitted that trigger notice is dated 07.01.2022.*

6. *Adverting to earlier proceedings made in the previous listing on 23.03.2022, learned counsel submits that a typed-set of papers captioned 'TYPED-SET OF PAPERS -II' dated 23.03.2022 has been brought on Board. Adverting to a letter dated 09.03.2022 from the first respondent, learned counsel submits that the first respondent has agreed for appointment of Arbitrator in response to the trigger notice.*

7. *Issue notice to respondents returnable in a fortnight i.e., returnable by 11.04.2022. Private notice permitted.*

List on 11.04.2022.'



4. The aforementioned 28.03.2022 proceedings shall now be read as an integral part and parcel of this order. The short forms, abbreviations and short references used in the earlier proceedings dated 28.03.2022 shall continue to be used in this order also for the sake of convenience and clarity.

5. Adverting to the primary contract, learned counsel for petitioner submits that arbitrable disputes raised and prayers that petitioners intend to make would not tread into the arena covered by any special legislation qua landlord-tenant jural relationship. To put it differently, learned counsel submits that the prayer and claims would go by ratio in ***Vidya Drolia Vs. Durga Trading Corporation*** reported in ***(2021) 2 SCC 1***.

6. As regards Clauses 34 and 35 of the primary contract which serve as arbitration agreement between the parties, there is no disputation or contestation qua the aforementioned three learned counsel before this Court about existence of the arbitration agreement. Therefore, applying the ***Mayavati Trading*** principle [***Mayavati Trading Private Limited Vs. Pradyut Deb Burman*** reported in ***(2019) 8 SCC 714***] and ***Duro Felguera*** principle [***Duro Felguera, S.A. versus Gangavaram Port Limited*** reported



in **(2017) 9 SCC 729**], this Court deems it appropriate to dispose of the captioned Arb.OP by appointing a sole Arbitrator. To be noted, relevant paragraph in **Mayavati Trading** case law is paragraph 10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

*(underlining made by this Court
to supply emphasis and highlight)*

7. Aforementioned paragraph 10 of **Mayavati Trading** case law takes this Court to **Duro Felguera** case law [**Duro Felguera, S.A. versus Gangavaram Port Limited** reported in **(2017) 9 SCC 729**], relevant Paragraphs in **Duro Felguera** case law are paragraphs 47 and 59, which



read as follows:

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'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

'59. 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. '

8. In the light of the narrative thus far, Hon'ble Mr.Justice G.Rajasuria (Retd.), former Hon'ble Judge of this Court, residing at No.31, III Cross, Brindavanam, Puducherry (Mob: 94450 00864) is appointed as sole Arbitrator and he will constitute the Arbitral Tribunal. Hon'ble sole Arbitrator is requested to enter upon reference as regards arbitrable disputes



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that have arisen between the parties qua primary contract (Lease Deed dated 15.03.2016 and two letters dated 27.09.2017 and 15.03.2018), adjudicate upon the arbitrable disputes that have arisen between the parties and make an award by holding sittings in 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

9. Captioned Arb OP is disposed of in the aforesaid manner. There shall be no order as to costs.

19.04.2022

gpa

To

Note: The Registry is directed to communicate this order forthwith to

1. Hon'ble Mr.Justice G.Rajasuria (Retd.),
Former Hon'ble Judge of this Court,
No.31, III Cross, Brindavanam,
Puducherry – 605 013.
Mob: 9445000864

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2. The Director

Tamil Nadu Mediation Conciliation Centre

-cum- Ex-Officio Member

Madras High Court Arbitration Centre

Chennai - 104.

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M.SUNDAR.J.,
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