



Arb.OP.No.14 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON	02.11.2022
PRONOUNCED ON	11.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

ARB.O.P.No.14 of 2022

1.T.G.Boobalakrishnan
2.B.K.Jayachitra

...Petitioners

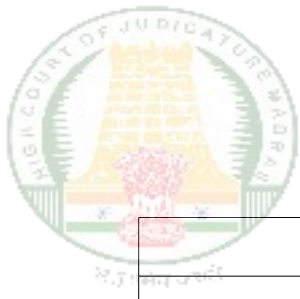
Vs.

1.M/s.Truliv Properties and Services Private Limited
No.11 (7), Nana Street,
T.Nagar, Chennai - 600 017.

2.Mr.Rohit Reddy,
Authorised Signatory: M/s.Truliv Properties and Service Private Limited,
No:11 (7) Nana Street,
T.Nagar, Chennai - 600 017.

3.Mr.M.V.Rajagopal
Authorised Signatory: M/s.Truliv Properties and Service Private Limited
No:11 (7) Nana Street,
T.Nagar, Chennai - 600 017.

Prayer: The original petition had been filed taking advantage of Section 11 (4) of Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator to render an award on the disputes between the petitioners and the respondents pursuant to alleged breaches and violations of the lease agreement dated 10.01.2020.



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For Petitioners	Mr.M.Murali
For Respondents	Mr.L.Muralikrishnan

ORDER

The original petition had been filed taking advantage of Section 11 (4) of Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator to render an award on the disputes between the petitioners and the respondents pursuant to alleged breaches and violations of the lease agreement dated 10.01.2020.

2. It had been stated in the petition that the petitioners are the absolute owners of the premises Old No.64/1 and New Door No.103 Ramanayakkan Street, Nungambakkam, Chennai - 600 034.

3. The said premises had been leased out to the respondent company. The first respondent through the second and third respondents had entered into the lease agreement on 10.01.2020. The period of lease was for three three years. The lease amount had not been registered. The respondents had taken the premises on lease for residential purpose. The monthly rent was agreed to a sum of Rs.2,40,000/-. They had paid an advance of Rs.14,40,000/- which was paid in two instalments. The 1st instalment was paid on 14.01.2020 and the 2nd instalment was paid on 10.02.2020. The



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possession was handed over on 20.01.2020. It had been stated that there had been defaults in the payment of rent. It had also been stated that though there was an outstanding of Rs.64,80,000/-, the respondent had paid only a sum of Rs.19,42,500/-.

4. It is stated by the learned counsel for the petitioner that since there is a specific clause in the lease deed to settle disputes through arbitration, the disputes which have arisen have to be referred to an arbitrator for adjudication. It had been further stated that a legal notice had been issued on 20.12.2021 and a reply dated 10.01.2021 had been received, wherein the respondent had stated about the rents which had been paid by them and about the adjustments towards the dues and had also stated that it was their prerogative as lessee to appoint an arbitrator but however the respondents had not appointed an arbitrator. It is complained that since the respondents had not appointed an arbitrator, the present petition has been filed seeking for appointment of an arbitrator.

5. Notice had been issued and learned counsel had entered appearance on behalf of the respondents.

6. It is the contention of the respondents that since the terms of the lease signified a relationship as landlord-tenant the matter cannot be referred



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to arbitration, as a specific Act prevails to adjudicate the disputes between landlord-tenant. It is the very specific contention of the respondents that since a special law, The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 governs the tenancy between the petitioners and the respondents, the matter cannot be referred to arbitration.

7. Heard, Mr.M.Murali, learned counsel for the petitioners and Mr.L.Muralikrishnan, learned counsel for the respondents.

8. The basic facts are not disputed. The petitioners are the owners of the property bearing Old No.64/1 and New No.103, Ramanayakkan Street, Nungambakkam, Chennai - 600 034. It measures to an extent of 2190 sq.ft. It consists of a ground and two upper floors and consists of 5 numbers of 3 BHK residential apartments, along with car parking spaces. The aggregate build up area measures 6272 sq.ft.

9. The petitioners as lessors and the respondents as lessees had entered into an agreement dated 10.01.2020. The period of lease was for three years. The petitioners had handed over possession and the respondents have taken over possession. However, there is a dispute with respect to the lease amounts paid. The petitioners claim that there is a default in the payment of



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the lease amount, whereas the respondents in their reply notice have mentioned about payments made by cheques and the monthly revised rents and they claimed that they have paid rents up to November 2021 and that there are no dues payable by them.

10. The lease deed also contains an arbitration clause to adjudicate on disputes which arise between the parties. The said clauses are as follows:-

30. Dispute Resolution and Arbitration:

30.1 Disputes: *Any disputes or difference arising amongst the Parties as to the Construction of any of the terms of this Lease Deed or as to any matter or thing of whatsoever nature arising there under or in connection therewith, including any question regarding its existence, validity or termination of this Lease Deed shall be considered as a dispute (the "Dispute"). Either Party may give written notice of a Dispute to the other party within 10 (ten) days of the occurrence of the event which give rise to such Dispute or the day that such event came to the notice of the concerned Party.*

30.2 Mediation: *On any Dispute being raised by any party, the parties shall initially seek to mediate such dispute and if such dispute is not resolved by mediation of Parties within a period of 30 (thirty) days, the Parties shall then resort to Arbitration in terms of Clause 30.3.*

30.3 Arbitration: *If any dispute arising between the parties is not amicably settled within 30 (Thirty) days of commencement of amicable attempts to settle the same as provided above, the Dispute shall be referred to, and be finally settled by, arbitration and shall be submitted to a sole arbitrator, to be appointed by the Lessee, in accordance with the Section 29 B of the Arbitration and Conciliation Act, 1996 as amended up to date. The decision of the arbitrator shall be final and binding on the parties.*

11. Claiming that since there are disputes but that the respondents had not come forward to appoint any arbitrator, the present petition had been filed under Section 11 (4) of the Arbitration and Conciliation Act, 1996.



12. The only issue which now arises for consideration is whether the dispute can be referred to be adjudicated through arbitration or whether the parties are governed under the provisions of the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants, Act, 2017.

13. Admittedly, the lease agreement is not registered. A few provisions of the said Act may be extracted. Section 4 (3) of the said Act is as follows:-

"Section 4(3):- Every agreement referred to in sub-Section (1) and sub-Section (2) and any tenancy agreement in writing already entered into before the commencement of this Act, shall be registered with the Rent Authority by the landlord or tenant, by making an application in the Form specified in the First Schedule within such time as may be prescribed."

11. Rule 3 of the Tamil Nadu Regulation of Rights and Responsibilities of Land Lords and Tenants Rules, 2019, prescribes the time line for registration as under:

"(i). The tenancy agreement entered into between the parties after the commencement of the Act shall be registered with the Rent Authority (before 22nd day of August 2019 or within ninety days from the date of execution of such agreement, whichever is later.

(ii). Written Tenancy agreement created before the commencement of the Act as per Section 4(2), within 90 days from the date of execution of the agreement.

(iii). Written tenancy created before the commencement of the Act, the registration shall be done within 575 days from the date of publication of the Rules in the Government Gazette (i.e.) with effect from 22.02.2019.

12. Section 4-A: Effect of non-registration

No document required to be registered under sub-Section 3 of Section 4 shall, unless it has been registered,-

- (a). Affect any immovable property comprised therein, or
- (b). Confer any power to adopt, or
- (c). Be received in evidence of any transaction affecting such property or conferring any right."



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14. It is thus prima facie clear that to bring the dispute within the ambit of the said Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, the agreement must be registered. In the instant case, the agreement is not registered.

15. The effect of non-registration had come up for discussion in a judgment reported in (2022) 1 LW 752, of ***S.Muruganandam & Ors. Vs. J.Joseph & Ors.***

16. A learned Single Judge of this court in *R.Subramanian, J* examined the above provisions and the effect of non-registration of the lease agreement between the parties and whether a dispute which arises on the basis of an agreement which is not registered can be raised before the Tribunal under the Act or whether it should be presented before the Civil Court.

17. The learned Single Judge in his judgment after analysing the provisions had come to the conclusion that if a written tenancy agreement had been entered into and the same is not registered, and which apart is subsisting then, the relief would only be to institute a suit before the Competent Civil Court.

18. With respect to Section 40 of the said Act, which very specifically barred the jurisdiction of a Civil Court to examine disputes relating to



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tenancy agreements, the learned Single Judge had placed reliance on the

judgment of the Full Bench of this Court reported in **(1982) MLJ 89**

Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and

Ors.

(Emphasis supplied)

19. The said issue also came for consideration before yet another learned Single Judge of this court *R.Manjula,J* in C.R.P.No.587 of 2022

M/s.Primex Healthcare and Research Pvt. Ltd., Vs.

Mr.A.A.L.Ramaswamy. and in C.R.P.No.1937 of 2022 ***The Suguna Vilasa***

Sabha Vs. Mr.Rajesh Mootha and Ors.

20. By a common judgment dated 29.09.2022, the learned Single Judge was of the opinion that if an agreement is un-registered then the same can be presented for registration before the Competent Authority with an application to condone the delay in registration.

21. In the instant case neither the petitioner nor the respondents have presented the agreement for registration. They have also not filed any application to condone the delay in presenting it for registration.

22. As a matter of fact, in the reply notice, the respondents have not disputed the jurisdiction of arbitration proceedings but have only claimed the privilege to appoint an arbitrator.



23. The Learned counsel for the petitioner relied on a judgment of the

Hon'ble Supreme Court reported in **(2021) 1 SCC 529 Suresh Shah Vs.**

Hipad Technology India Pvt. Ltd. The relevant paragraphs are:

*"17. Such equitable protection does not mean that the disputes relating to those aspects between the landlord and the tenant is not arbitrable and that only a Court is empowered to waive the forfeiture or not in the circumstance stated in the provision. In our view, when the disputes arise between the landlord and tenant with regard to determination of lease under the TP Act, the landlord to secure possession of the leased property in a normal circumstance is required to institute a suit in the Court which has jurisdiction. **However, if the parties in the contract of lease or in such other manner have agreed upon the alternate mode of dispute resolution through arbitration the landlord would be entitled to invoke the arbitration clause and make a claim before the learned Arbitrator.** Even in such proceedings, if the circumstances as contained in Section 114 and 114A of TP Act arise, it could be brought up before the learned Arbitrator who would take note of the same and act in accordance with the law qua passing the award. In other words, if in the arbitration proceedings the landlord has sought for an award of ejectment on the ground that the lease has been forfeited since the tenant has failed to pay the rent and breached the express condition for payment of rent or such other breach and in such proceedings the tenant pays or tenders the rent to the lessor or remedies such other breach, it would be open for the Arbitrator to take note of Section 114, 114A of TP Act and pass appropriate award in the nature as a Court would have considered that aspect while exercising the discretion.*

18. On the other hand, the disputes arising under the Rent Acts will have to be looked at from a different view point and therefore not arbitrable in those cases. This is for the reason that notwithstanding the terms and conditions entered into between the landlord and tenant to regulate the tenancy, if the eviction or tenancy is governed by a special statute, namely, the Rent Act the premises being amenable to the provisions of the Act would also provide statutory protection against eviction and the courts specified in the Act alone will be conferred jurisdiction to order



eviction or to resolve such other disputes. In such proceedings under special statutes the issue to be considered by the jurisdictional court is not merely the terms and conditions entered into between the landlord and tenant but also other aspects such as the bonafide requirement, comparative hardship etc. even if the case for eviction is made out. In such circumstance, the Court having jurisdiction alone can advert into all these aspects as a statutory requirement and, therefore, such cases are not arbitrable. As indicated above, the same is not the position in matters relating to the lease/tenancy which are not governed under the special statutes but under the TP Act.

19. 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 whereunder 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 whatsoever to invoke the Arbitration Clause. This view is fortified by the opinion Vidya Drolia Vs. Durga Trading Corporation [(2021) 2 SCC 1] expressed by the Coordinate Bench while answering the reference made in the case of Vidya Drolia Vs. Durga Trading Corporation (2019) 20 SCC 406 wherein the view taken in Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia (2017) 10 SCC 706 is overruled.***

(Emphasis supplied).

24. It is thus clear that when the parties have not registered their agreement as held in ***S.Murugandam and Ors.*** referred supra, the only option is only to go before the Competent Civil Court.



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25. The Court has power to appoint an arbitrator. Accordingly I allow this Original Petition. Thiru.P.Ganesan (Mob.No.9600045571, 9600045570) former District Judge is appointed as an arbitrator. The initial fees is Rs.1,00,000/-(Rupees One Lakh Only) payable by the petitioner. The Arbitrator may determine the further fees payable. The entire fees shall be paid in equal terms by the petitioners and the respondents. The Arbitration proceedings should be concluded by 30.06.2023. This Original Petition stands allowed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking Order : Yes/No
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