



O.S.A.(CAD) No.108 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
10.10.2023	29.11.2023

CORAM

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**O.S.A.(CAD) No.108 of 2022
and C.M.P.No.13193 of 2022**

S.Anbazhagan ... Appellant/Petitioner

Vs.

Bharmari Bai (deceased)

1. Pushpa B.Jain
2. Sohan
3. Prasanna
4. Heena
5. Rekha
6. Sheetal Hundia
7. Neetu
8. Babupal
9. Lalith Kumar
- 10.Rajkumar
- 11.Mahaveer

... Respondents/Respondents

(Respondents 1 to 11 brought on record as legal heirs of the deceased sole respondent as per order dated 13.11.2017 in Appln. No.7193 of 2017)

Prayer: Appeal filed under Order XXVI Rule 9 of O.S. Rules read with Sec.13(1) of The Commercial Courts Act, 2015 against the order, dated 28.11.2018 made in O.P.No.366 of 2017.

For Appellant : Mr.P.Sunil for
Mr.K.P.Shanthosh
For Respondents : Mr.V.Raghavachari for
Mrs.V.Srimathi



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D.KRISHNAKUMAR, J.

The challenge in the instant intra Court appeal is against the order passed by the learned Single Judge dismissing the O.P.No. 366 of 2017 by holding that no perverse finding has been rendered or arrived by the learned Arbitrator that the appellant was only a permissive occupier/licensee.

2. Facts in Brief:

An agreement was entered into between the appellant and the respondent on 20.6.2006 to occupy the demised premises on payment of advance of Rs.3,00,000/- and also on payment of licence fee of Rs.23,000/- per month. In the said agreement, there is specific clause that if any dispute arises on this agreement, both parties agree to settle the same among themselves by arbitration without resorting to any court proceedings. By invoking the said clause in the agreement, the respondent herein had filed a claim petition before the Arbitrator by raising a contention that the licence to occupy the demised premises had been granted to the appellant for a period of 11 months and the same was extended for further period of five months at the option of the respondent herein, second party in the agreement. In the said agreement, there is a clause for executing a Power of Attorney to run the business in the name and style of H.Mahavirchand. In the claim petition, it is



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specifically stated that the appellant has belatedly paid a sum of Rs.18,000/- by way of demand draft towards arrears for a period of six months and the said amount was not accepted or received by the respondent. Therefore, the respondent (deceased) has filed the claim petition before the Arbitrator seeking direction to vacate and hand over the premises under dispute and to pay arrears of Rs.9,63,000/- as arrears of licence fees from the month of February, 2012 to July 2015.

3. The appellant has filed a detailed counter statement before the Arbitrator objecting the claim petition filed by the respondent. According to the appellant, said agreement was entered into between the appellant and the respondent's husband. The said agreement is governed by the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Act 23 of 1973. Therefore, the contention of the respondent's husband is totally false. Therefore, the relationship between the appellant and the respondent's husband is tenant and landlord. Therefore, award cannot be passed by the Arbitrator since the agreement is governed by the Special Act.

4. The learned Arbitrator had framed the issues whether the appellant executed the agreement for the petition mentioned shop premises in the capacity of tenant or as a Licensee; and "whether the claim petition



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before the Arbitrator is not legally maintainable; and whether the Arbitrator has jurisdiction to entertain the claim petition and some other issues have been framed for the reliefs as sought for in the claim petition.

5. The sole Arbitrator elaborately discussed the issues raised in the claim petition by holding that the agreement entered into between the parties to put the respondent into possession of the demised shop is only as a licensee and the same does not create a legal relationship as Lessor and Lessee between the parties. Challenging the same, O.P.No.366 of 2017 has been filed before this Court by the appellant. This Court having considered all the issues, dismissed the said O.P. Challenging the dismissal of the said O.P., the instant intra Court appeal has been filed before this Court.

6. The following grounds are raised in the appeal;

Both the Arbitrator as well as learned Single Judge failed to appreciate the case of the appellant that he occupied the premises as tenant under the respondent's husband. The claim petition filed before the Arbitrator is not maintainable since relationship of the appellant and the respondent is only as a tenant and Landlord. Therefore, any dispute between the tenant and the landlord is governed under the Tamil Nadu Buildings (Lease and Rent Control) Act and as such, if any dispute, same shall be invoked before the competent



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forum. The appellant also disputed the signature in Ex.P1. The other ground raised by the appellant is that both the Arbitrator as well as the learned Single Judge in their findings misconceived the fact that the appellant is a licensee and permissive occupant whereas the appellant is a tenant. Therefore, on the aforesaid ground, the instant appeal has been filed before this Court.

7. In support of his contention, the learned counsel appearing for the appellant has placed reliance on the following decisions:

1. ***Natraj Studios (P) Ltd. Vs. Navrang Studios [Civil Appeal nos.1906-1907 of 1980 dated 7.1.1981]***
2. ***M/s.N.N.Global Mercantile Pvt. Ltd. Vs. M/s.Indo Unique Flame Ltd. & Ors [2023 (7) SCC 1]***
3. ***Macro Marvel Projects Ltd. Rep. By its Executive Director, Ragu Kumar Vs. J.Vengatesh and Others [2022 SCC Online Mad 4702]***

8. Counter affidavit has been filed by the 9th respondent herein wherein it is stated as under:

The respondent fraudulently created a memorandum of Agreement dated 20.6.2006 stating that he is paying rent to Trust named Sathrasala Venkatachalam Chetty's Charities from the inception of his induction in the building as a tenant by the trustee, that he is running a shop under the name and style of "Anbu Cell City", a portion in the ground floor in the aforesaid Trust. The original agreement was not produced before the



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Arbitrator. The appellant has filed O.S.No.3438 of 2012 on the file of the City Civil Court, Chennai for permanent injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the shop in his occupation claiming that he was the tenant in the said shop and the suit was dismissed as not maintainable in view of the arbitration clause in the agreement. Therefore, it is clear that the appellant is not at all a tenant and he was only a licensee. Pursuant to the dismissal of the suit, the respondent filed E.P.No.1189 of 2019 to execute the award passed in Arbitration case No.1 of 2015, warrant also issued to execute the award and the bailiff of the Court also taken possession of the demised shop in E.P.No.1189 of 2019. Even after delivery taken by the respondent, the appellant preferred E.A.No.3 of 2021 by making false and frivolous allegations as against the respondent and the bailiff and the same is pending before the City Civil Court. Therefore, the appeal is liable to be dismissed.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

10. Learned counsel appearing for the respondents drew the attention of this Court to Ex.P1 wherein in page 3, it is clearly stated as



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follows:

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"The Second Party (the appellant herein) has to pay Rs.23,000/- (Rupees twenty three thousand only) per month to the first party by way of licence fees for permission."

It is also stated in the agreement that the first party viz., Hastimal Dharmaji who is running a business in the demised shop as a tenant under the name and style of H.Mahavirchand, agreed to give permission to run the shop as Power agent to look after the business alone. The first party viz., the respondent's husband agreed for the proposal and both parties reduced the same into the Memorandum of Understanding agreement. In the aforesaid covenants in the said agreement, it is clearly stated that the appellant has agreed to run the business in the name and style of Mahavirchand. The first Party also agreed to execute the Power of Attorney in favour of the appellant to run business in the name and style of "Mahavirchand" to avoid third party objections, etc.

11. On careful examination of the covenants contained in the aforesaid agreement entered into between the parties, it is clearly stated that permission is granted to the respondent's husband to run the shop to look after the business alone, due to his old age and other reasons. Secondly, it is also stated in the agreement that a sum of Rs.23,000/- per month payable to the first Party as licence fees for the permission granted to the appellant to run



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the business in the property in question. Thirdly, it is stated in the agreement, "any dispute arise between the parties, the same shall be referred to Arbitrator to resolve the dispute between the parties.

12. The contention of the appellant is that the said agreement is governed by the special Act viz., Tamil Nadu Buildings (Lease and Rent Control) Act. The covenants in the agreement clearly states that permission is granted to the respondent's husband to run the business in the name and style of "Mahavirchand". When there is such specific clause contained in the agreement to run the business in the name and style of "Mahavirchand" to look after the business alone, the question of tenant-landlord relationship does not arise. It is only a business agreement between the parties to run the business in the demised property, since the respondent at that time, could not run the business due to his old age and other reasons. Therefore, the Arbitrator have jurisdiction to entertain the claim petition filed by the respondent. The appellant was given possession only in the capacity of licensee to run the shop, not as a tenant. Therefore, the contention of the appellant by relying upon the decisions will not render any assistance to the appellant. The Arbitrator has considered all the objections raised by the appellant and passed the award holding that the appellant had been carrying on business in the shop premises as a licensee with the permission of Hastimal Dharmaraj and the learned Single



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Judge also rightly dismissed O.P.No.366 of 2017 by stating that the award passed by the Arbitrator is well founded. The Hon'ble Supreme Court in the case of *Associate Builders Vs.Delhi Development Authority reported in (2015) 3 SCC 49* has held that the scope of judicial intervention is very limited in an award passed under Arbitration and Conciliation Act. Therefore, there is no error apparent on the face of it to interfere with the order passed by the learned Single Judge.

13. In the result, the Original Side Appeal stands dismissed. The order passed by the learned Single Judge in O.P.No.366 of 2017 dated 28.11.2018 is confirmed. No costs. Connected miscellaneous petition is closed.

[D.K.K.J.] [P.D.B.J.]
29.11.2023

Speaking Order/Non Speaking Order
Index: Yes
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**D.KRISHNAKUMAR, J.
AND
P.DHANABAL, J.**

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**Pre-Delivery Judgment in
OSA(CAD)No.108 of 2022
and C.M.P.No.13193 of 2022**

Dated: 29.11.2023