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C.R.P.No.2321 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

C.R.P.No.2321 of 2024

and

C.M.P.No.12196 of 2024

M/s.GTL Infrastructure Ltd.,
Registered office at
Global Vision Electronic Sadan-II,
MIDC TTC Industrial Area,
Mumbai – 400 010.

... Petitioner

Vs.

1.L.Usha
2.P.Ranjith Kumar

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the order dated 03.02.2024 passed in I.A.No.1 of 2023 in O.S.No.2349 of 2023 on the file of the learned XV Additional City Civil Court, Chennai and refer the parties to arbitration.

For Petitioner : Mr.C.Sakthimanikandan

For Respondents : Mr.B.Sridhar Bhat



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ORDER

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This petitioner/defendant in O.S.No.2349 of 2023 filed I.A.No.1 of 2023 seeking to refer O.S.No.2349 of 2023 for arbitration in terms of the arbitration clause available in the license agreement dated 26.08.2013 and the same was dismissed by order dated 03.02.2024, against which, the present revision.

2.The contention of the learned counsel for petitioner is that the respondents/plaintiffs filed a civil suit in O.S.No.2349 of 2023 seeking a relief to direct the petitioner to quit and deliver the vacant possession of the suit schedule property by removing the Cellphone Tower erected by the petitioner. Further to pay the arrears of rent of Rs.11,31,531/- for the period from March 2020 to February 2023 and to pay damages.

3.The learned counsel for petitioner submitted that the Lower Court wrongly interpreted the judgment relied on by the respondents in *Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and others* reported in



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(2011) 5 SCC 532, wherein, non arbitrable disputes are enlisted. The learned

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Judge relying to clause (vi) in the judgment, wherein it is held that eviction can be granted only by specified Courts and not by an Arbitrator, held plaint filed is for a non arbitrable dispute and dismissed the petition, which is not proper. The Lower Court wrongly construed that the suit is governed by special statutes. The Lower Court failed to consider that the present suit not filed under the tenancy laws before the Rent Tribunal constituted under the special statute. The Lower Court failed to consider the judgment in *Vidya Drolia and others vs. Durga Trading Corporation* reported in (2019) 20 SCC 406, wherein the Hon'ble Apex Court clarified the judgment relied on by the respondent herein, specifically deals with landlord-tenant disputes arising under the transfer of property act and are amenable to arbitration, where the rights of parties involved are in the nature of 'in personam'. Further the Lower Court failed to consider that the Cellphone Tower was installed in the respondent's property based on the license deed entered between the parties and the deed contains an arbitration clause and any issues with respect to the



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Tower has to be referred to arbitration only. The license agreement dated 26.08.2013 annexed to the plaint, in paragraph 16 of the agreement it is recorded that any dispute or claim between the parties hereto either during its subsistence or after its termination, shall be referred to the arbitration of a sole arbitrator in accordance with the provisions of Arbitrations and Conciliation Act, 1996. The petitioner and respondents being signatory to the same, it is now for the arbitrator to decide the dispute and not a suit in civil Court. In support of his contention, the petitioner relied upon the following judgments:

- (i) *Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and others* reported in (2011) 5 SCC 532;
- (ii) *Vidya Drolia and others vs. Durga Trading Corporation* reported in (2019) 20 SCC 406; and
- (iii) *Himangni Enterprises vs. Kamaljeet Singh Ahluwalia* in *Civil Appeal No.16850 of 2017*.

4.He further submitted that in the **Vidya Drolia** case, doubting the ruling in **Himangni Enterprises** case, the Hon'ble Apex Court referred the



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matter to a larger Bench. In such circumstances, the trial Court ought to have dismissed the suit as having no jurisdiction and directed the parties to pursue the remedy under Arbitration and Conciliation Act.

5.The learned counsel for the respondents/plaintiffs strongly opposed contending that the respondents/plaintiff filed a suit for the relief of delivery of vacant possession of suit property by removing the Cellphone Tower, recovery of arrears of rent and damages for illegal occupation. The License Agreement was entered on 26.08.2013 for installation of Cellphone Tower in the respondents/plaintiff's property. The petitioner was paying the rent regularly for some time and thereafter stopped making any payment and hence, there was a dispute between the petitioner and respondents. Further the License Agreement got terminated on 22.07.2022 and the agreed license period is completed. The petitioner refused to enter into fresh license agreement and as per the License Agreement, the Arbitrator can only pass an award for recovery of arrears of rent and nothing more. As regards the



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eviction of tenant as held in the case of **Booz Allen and Hamilton Inc.**,

wherein the Hon'ble Apex Court had listed six kinds of cases of non arbitrable disputes. The (vi) clause is 'eviction or tenancy matters governed by special statutes, where the tenant enjoys statutory protection against eviction and only the specified Courts are conferred jurisdiction to grant eviction or decide the dispute'. Further in this case the arbitration proceedings is yet to be initiated, no notice or any such procedure initiated following the license agreement.

6.Further referring to clause 16 of the License Agreement, he submitted that it is a unilateral clause which cannot act as a bar to file a civil suit. Though the case of **Vidya Drolia** referred to the larger Bench, no prohibition issued. In view of the same, as on date, the direction in **Himangni Enterprises** is still in force. Hence, submitted that the contention of the petitioner rejected by the trial Court, needs no interference.



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7.Considering the submissions made and on perusal of the material

it is seen that the respondents/plaintiffs filed a suit in O.S.No.2349 of 2023.

The relief sought for in the suit includes delivery of vacant possession, which is a non-arbitrable dispute. From the License Agreement it is seen that the agreement entered on 26.08.2013 for a period of 9 years and now that period elapsed on 22.07.2022. The suit filed on 03.10.2023 after issuance of notice to the petitioner, but the petitioner not responded to the notice. It is also seen that the petitioner so far not initiated arbitration proceedings and not paid the grants as per the License Agreement from November 2017 till February 2023 and the Tower is without any maintenance, causing danger to public safety.

Neither the license amount paid nor the Tower maintained and the petitioner shown any interest to maintain the Tower and intends to continue with the license. In such circumstances, now taking recourse to clause 16 of the License Agreement and seeking dismissal of the suit for the reason that the matter is a arbitrable one, without initiating any steps in this regard, filing the I.A.No.1 of 2023 is not proper. The Trial Court rightly rejected the



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M.NIRMAL KUMAR, J.

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petitioner's contention. In view of the above, this Court is not inclined to entertain this petition.

8.Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

02.08.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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To

The XV Additional Judge,
City Civil Court,
Chennai.

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and C.M.P.No.12196 of 2024