



Arb.O.P.No.63 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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M.Gagan Bothra

... Petitioner

Vs.

Mrs.Balamananian

... Respondent

Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act 1996, to appoint an arbitrator to decide the dispute and direct the arbitrator to pass an award thereof.

For Petitioner : Mr.E.Jayasankar

For Respondent : Ms.R.V.Rukmani
For M/s.P.B.Ramanujam Associates

ORDER

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This Original Petition is filed seeking for the appointment of an arbitrator to decide the disputes that have arisen between the petitioner and the respondent under the lease agreement dated 08.04.2019.

2. It is the contention of the petitioner that he is a tenant under the respondent. Though the father of the petitioner is the original tenant and there are proceedings in RCOP, thereafter, a fresh agreement came into existence on 08.04.2019. The said agreement also provides for reference to the arbitration, if there is any dispute between the parties. It is the further contention that there is a dispute between the parties in respect of payment of rent in respect of lease agreement dated 08.04.2019. Hence, he seeks for appointment of an arbitrator.

3. The main contention of the respondent is that, originally, the petitioner's father was inducted as tenant in the year 2013 and he had committed default to the tune of Rs.2 Crores. Several proceedings were initiated against him for eviction, but before the proceedings culminated into any order, he died in 2019. Therefore, according to the respondent, the



agreement dated 08.04.2019 is a forged one and he never executed the same.

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4. It is the further contention of the respondent that the rental authority have also stated that the registration number given by the petitioner is not a original number given by the authority and therefore, according to the respondent, the alleged agreement is a forged one and not enforceable in law.

5. The learned counsel for the petitioner submits that since there is no dispute with regard to agreement and the agreement also provides for reference to the arbitration, the plea of forgery cannot be raised at this stage and it is for the arbitration tribunal to decide the issue. Whereas, the learned counsel for the respondent vehemently submits that, when the father himself is a chronic defaulter in payment of rent to the tune of Rs.2 Crores, the question of entering a new lease with the son does not arise at all.

6. It is further submitted by the learned counsel for the respondent



that an FIR has been registered in Crime No.269 of 2022 against the petitioner for various offences under Sections 465, 467, 468, 471 and 34 IPC. During the investigation, the so-called agreement and admitted signatures were sent to the Forensic Department for expert analysis. The Forensic Expert has given a opinion that the agreement is a forged one and as such, the parties cannot be referred to arbitration based on the agreement.

7. No doubt, the mere plea of fraud or forgery cannot be entertained and it has to be decided by the Arbitral Tribunal. The Arbitral Tribunal can go into the issue and find out whether a plea of fraud or forgery is there. But the fact remains that the very agreement was disputed, Investigation in Crime No.269 of 2022 is under process. During the investigation, an expert opinion was obtained from the forensic department with regard to the disputed document, wherein it is clearly established that the agreement in question is not written by same person.

8. From the above opinion, it is made clear that the agreement is not enforceable at this stage, therefore, merely on the basis of that, contract said



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to have been fabricated cannot be the legally enforceable.

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9. Accordingly, this Court does not find any merits in this petition and hence, it is dismissed. No costs.

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