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Arb.O.P. (Com.Div.) No.483 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.483 of 2023

M/s.Solar Designs Private Limited,
Represented by its Director,
Mr.A.A.K.ApathSakaayem,
No.1, A Wing, 3rd Floor,
Parsn Manor, No.602, Anna Salai,
Chennai – 600 006.

.. Petitioner

Vs.

1.Mr.S.Ramesh
2.R.Subramani Naicker

.. Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 29.09.2023 passed by the learned Sole Arbitrator in its entirety and to direct the respondents to pay the costs.

For Petitioner : Mr.Sharath Chandran

For Respondents : Mr.V.Subramani

ORDER

Heard the learned counsel for the petitioner and the learned counsel
for the respondents.



2. The petitioner is aggrieved by the impugned Award dated 29.09.2023 passed by the learned Arbitrator, whereby, the learned Arbitrator has directly rejected all the claims of the petitioner herein. The petitioner herein had earlier approached this Court in O.P.No.813 of 2018. By an order dated 02.07.2019, an Arbitrator was appointed. Subsequently, on account of his elevation to this Court as a Hon'ble Judge of this Court, Arb.O.P.(Com.Div)No.246 of 2022. Arb.O.P.(Com.Div)No.246 of 2022 came to be ordered on 30.06.2022 under Section 15(2) of the Arbitration and Conciliation Act, 1996.

3. It is in this background, the learned Arbitrator has entered upon reference and has passed the impugned Award. The dispute between the parties arises out of Memorandum of Understanding dated 11.08.2010 marked as Ex.A2, rental agreement dated 12.04.2010 and another rental agreement dated 12.04.2010. The arrangement between the petitioner and the respondents under the Memorandum of Understanding dated 11.08.2010 contains a Clause to resolve the dispute through Arbitration. Relevant Clause reads as under:-

14.All disputes or differences arising between the parties hereto in connection with this Memorandum of Understanding or the interpretation or the legal effect of any of the terms and conditions contained in this



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Memorandum of Understanding and/or in connection with the rights and obligations of the parties hereto arising under this Memorandum of Understanding shall be referred to the sole arbitration or a single Arbitrator if the parties hereto agree upon, otherwise all such disputes and differences shall be referred to the arbitration of two arbitrators, one to be appointed by the PARTY OF THE FIRST PART and the other to be appointed by the PARTY OF THE SECOND AND THIRD PART. The Arbitrators so appointed shall be entitled to appoint an Umpire before entering upon the reference. The Sole Arbitrator or the Arbitrators or the Umpire, as the case may be, shall have summary powers and the said arbitration shall be governed by the provisions of the Indian Arbitration Act X of 1940 or any statutory re-enactment or Notification thereof for the time being and from time to time in force.

4. The Constitution of the Arbitral Tribunal, *Prima facie* was contrary to the Clause mentioned therein. Be that as it may, the Arbitral Tribunal was constituted. Thereafter, the Arbitral Tribunal proceeded to pass the impugned Award in respect of the dispute between the petitioner and the respondents. The petitioner had earlier filed O.S.No.360 of 2017 before the Principal District Munsif Court, Ponnammalli. The suit was filed for a bare injunction. The respondent on the other hand had filed RCOP.No.57 of 2017 under the provisions of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 under Section 10-I and 10(3)(a)(iii) for arrears of rent. These proceedings were pending.

4A. A reference was made pursuant to order passed by this Court



in O.P.No.813 of 2018 on 02.07.2019. At the same time, when the arguments were being advanced, the suit filed by the claimant/petitioner came to be dismissed on 27.07.2023. The impugned Award came to be passed on 29.09.2023.

4b. Meanwhile, the respondent had filed M.P.No.166 of 2017 in RCOP.No.57 of 2017 before the District Munsif – cum – Rent Controller, Poonamalee. An order came to be passed which was not complied by the petitioner herein. Therefore, RCOP.No.57 of 2017 came to be allowed by directing delivery of the property before the learned Arbitrator.

5. Part of the claim has arisen on account of the promissory note dated 18.04.2015 which was said to have been executed by both the respondents for a sum of Rs.20,00,000/-.

6. The pre-cursor to the above proceedings is a notice issued by the respondents to the petitioner on 08.11.2017, wherein, the respondents demanded a sum of Rs.5,63,000/- as the rental arrears from the petitioner. It was replied back by the petitioner through their counsel on 18.11.2017, wherein, for the first time the petitioner demanded amounts based on the



aforesaid promissory note dated 18.04.2015.

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7. The petitioner thus filed O.S.No.360 of 2017 before the Principal District Munsif Court, Poonamalle. On the other hand, the respondents filed RCOP.No.57 of 2017 as mentioned above. The Arbitral Tribunal has rejected the claims of the petitioner by stating that there cannot be any parallel proceedings before the Arbitral Tribunal under the Memorandum of Understanding for the relief.

8. The arguments of the petitioner is that scope of dispute before the Arbitral Tribunal and before the Civil Court and before the Rent Controller Court are different. It is submitted that O.S.No.360 of 2017 was for bare injunction and therefore the learned Arbitrator ought to have passed an appropriate Award on merits. That apart, it is not open for the learned Arbitrator to state that parties ought to have approached this Court under Section 8(1) of the Act seeking to refer the matter for arbitration and they have ought not to have approached this Court under Section 11 of the Act.

9. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in



Nagindas Ramdas V. Dalpatram Ichharam reported in (1947) 1 SCC 242, wherein, the Hon'ble Supreme Court held that Rent Controller can pass orders only in accordance with the statute. Therefore, the Rent Controller was not competent to decide the issue arising out of the amounts payable by the respondents to the petitioner.

10. The learned counsel for the petitioner has also placed reliance on the decision of this Court in ***K.I.M.Sajjdeen Vs. A.1254, Theni Co-operative Sale Society Limited, Theni, Rep by its Special Officer/Deputy Registrar*** reported in (2009) 2 L.W 270. That apart, the learned counsel for the petitioner has further placed reliance on the decision of the Hon'ble Supreme Court in ***SBP & Co. Vs. Patel Engineering Ltd. and another*** reported in (2005) 8 SCC 618. A reference was made to paragraph No.32, wherein, the Hon'ble Supreme Court has held that once the Court declines to interfere with the adjudication of the Chief Justice to the extent it is made, it becomes final. This will leave the Arbitral Tribunal to decide the dispute on merits unhampered by preliminary and technical objections. It is submitted that the Court observed as follows:-

In the long run, especially in the context of the judicial system in our country, this would be more conducive to minimising judicial intervention in matters coming under the Act.



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11. Finally, the learned counsel for the petitioner has drawn attention to the decision of the Hon'ble Supreme Court in ***Vidya Drolia and others Vs. Durga Trading Corporation*** which was also relied by the learned Arbitrator to reject the case of the petitioner. A reference was made to paragraph No.80, wherein, the larger bench of the Hon'ble Supreme Court has overruled the decision in ***Himangni enterprises Vs. Kamaljeet Singh Ahluwalia*** reported in (2017) 10 SCC 706 and has held that dispute between the landlord and tenant are not arbitrable as per transfer of property does not prohibit.

12. The learned counsel for the respondent on the other hand would submit that the suit was filed by the District Munsif Court, Ponnammalli in O.S.No.360 of 2017. It is submitted that in the said suit, the petitioner had not made any reference to the pro note dated 18.04.2015. It is submitted that the claim is based on the pro note and therefore it is not arbitrable in terms of the arbitration Clause under Memorandum of Understanding dated 11.08.2010 as independent transactions is not governed by the aforesaid arrangement. That apart, it is submitted that pro note was not executed by the respondent.



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13. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

14. In my view, the views taken by the learned arbitrator that the dispute governed by Memorandum of Understanding is not arbitrable in view of pendency of O.S.No.360 of 2017 and RCOP.No.57 of 2017 is not correct. At the same time, the dispute arising out of pro note dated 18.04.2015 could not have the subject matter of arbitration proceedings as it was an independent transactions between the parties. Unless the parties had agreed to resolve the dispute under the Memorandum of Understanding in respect of the pro note that was allegedly excluded by the respondents on 18.04.2015, it could not form part of the arbitral proceedings.

15. Therefore, while setting aside the Award passed by the learned arbitrator, I leave it open for the petitioner as also the respondents to work out the remedy further before the Civil Court. In the result, the Award stands set aside.



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16. It is made clear that the time spent from the date of notice under Section 21, till the date of receipt of this order shall stand excluded for the parties to work out the remedy in the manner known to law.

17. This Original petition stands disposed of with the above observations.

29.02.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.

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