



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.12.2024

Pronounced on:21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.(Comm.Div.) No.495 of 2024
and O.A. No.854 of 2024

N.Murugan

... Petitioner

vs.

1.M/s.Growing in Graces,
Represented by its Partner,
Mrs.Vemireddy Sowndarya

2.Mrs. Vemireddy Sowndarya

... Respondents

PRAYER: Arbitration Original Petition filed under Sections 11 (6) of the Arbitration and Conciliation Act, 1996 to resolve the disputes between the parties herein with respect to the Lease deed dated 15.07.2022.

For Petitioner : Mr.P.R.Raman,
Senior Counsel
for Mr.Anupam Raghuraman

For Respondent : Mr.N.S.Elamugilan



WEB COPY



Arb.O.P.(Comm.Div.) No.495 of 2024

ORDER

The Original Petition has filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator to resolve the disputes between the parties herein, in respect of the lease deed dated 15.07.2022. Pending initiation of arbitration proceedings, the Applicant in O.A. No.854 of 2024, has sought for interim injunction to restrain the Respondents from taking/calling admission of new students in Euro Kids Kids Pre-School, which is being run by the Respondent at the schedule premises, which is the subject matter of the arbitration.

2. I have heard Mr.P.R.Raman, learned Senior Counsel appearing for the Applicant and Petitioner in the Application and Arbitration O.P. and respectively and Mr. N.S.Elamugilan appearing for the Respondent in the Application as well as in the main O.P.

3. The learned Senior Counsel would invite my attention to the



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

Arbitration Clause in the Lease Deed dated 15.07.2022 and contend that the parties have agreed to resolve the disputes through arbitration in accordance with provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act'). The parties have also agreed that the arbitration would be at Chennai, Tamil Nadu and the arbitration shall be by a Sole Arbitrator.

4. The learned Senior Counsel would further state that the disputes arose on account of default committed by the Respondent in payment of lease rentals which necessitated the Applicant to terminate the lease by issuing a notice on 21.06.2024. Further, on 30.09.2021, Section 21 notice contemplated under the Act has also been issued. However, the 2nd Respondent sent a reply on 28.10.2024 refusing to consent for appointment of the Sole Arbitrator as proposed by the Applicant. Hence the Arbitration Original Petition has been filed.

5. Insofar as the Section 9 Application, the learned Senior Counsel



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

would submit that the respondents are running a kindergarten school, Euro Kids in the premises belonging to the Applicant, and having already terminated the lease, the Respondents should not admit fresh students, which would only lead to unnecessary complications and putting to peril the future of young children who may be admitted into the School especially after termination of the lease. He would pray for the Application as well as Arbitration Original Petition being ordered.

6. Per contra, the learned Counsel for the Respondents submits that the subject matter cannot be referred to arbitration since it involves third party interest, namely, young children attending the school, who would be displaced and left in the lurch if the school is forced to close down and shift to some other place. He would refer to the decision of the Hon'ble Supreme Court in the case of *Vidya Drolia & Others v. Durga Trading Corporation Reported*, reported in *CDJ 2020 SC 890*, where it was held that when a cause of action and subject matter of disputes affect third party rights and



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

have *erga omnes* effect and require centralised adjudication, then mutual adjudication would not be appropriate and enforceable. Placing reliance on the said decision of the Hon'ble Supreme Court, the learned Counsel for the Respondents would seek for dismissal of the Application as well as the Original Petition.

7. I have paid my anxious and careful consideration to the arguments advanced by the learned Counsel on either side.

8. Admittedly, the dispute arises under a lease deed in respect of the premises belonging to the Applicant and where the Respondent was inducted as a tenant. It is the case of the Applicant that the Respondent fell into arrears of rent and the Applicant was therefore constrained to terminate the lease and seek for recovery of possession. In the Section 21 notice issued by the Applicant on 30.09.2024, the Arbitration Clause was invoked to adjudicate the disputes between the Petitioner and the Respondent's School.



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

However, the Respondent has not consented to the name of the Arbitrator proposed by the learned counsel for the Applicant. The only contention of the learned Counsel for the Respondent is that since the subject matter of the arbitration involves school going kids, their interest would be seriously prejudiced and therefore, referring to the ratio laid down in *Vidya Drolia's case* (referred herein supra), he would contend that the arbitration proceeding are not maintainable.

9. I see no merits in the said argument advanced by the learned counsel for the Respondent. Admittedly, the Respondent has taken the premises of the Petitioner for purposes of running a kindergarten school, undertaking to pay monthly rents promptly. The case of the Applicant is that the Respondent has committed default which forced the Applicant to terminate the tenancy and invoke arbitration proceedings. It is not in dispute that the agreement provides for an arbitration Clause whereby the parties have agreed to resolve all their differences and disputes by resorting to



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

arbitration under the Arbitration and Conciliation Act, 1996.

10. The fact that the school going children will be affected because of the arbitration can never be countenanced. The Respondent is bound by his contractual obligations under the lease deed with the Applicant, being a tenant in the premises belonging to the Applicant. I do not see any third-party rights being affected because of the disputes between the Applicant and the Respondents. The ratio laid down by the Hon'ble Supreme court in *Vidya Drolia's case* (referred herein supra), was on entirely different facts and circumstances and the ratio laid down by the Hon'ble Supreme Court cannot be taken out of context and put against the Applicant in the present case, when there is a valid and existing arbitration agreement between the parties. It is always open to the respondent to press all his contentions before the learned Arbitrator who shall decide the same in accordance with law and its own merits. I see no impediment for appointment of sole arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

11. In view of the foregoing discussions, I am inclined to appoint **Mr.S.R.SUNDAR, Advocate having address 2nd Floor, New No.271, Old No.127, Rohith Tower, Angappa Naicker Street, Chennai – 600 001, Phone: 044-25224477 Cell: 94440 55853 E.Mail ID: kasthuriandsundar@gmail.com** as the Sole Arbitrator. The sole Arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law.

12. The learned Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not later than six (6) months from the date of his entering into reference.

13. Accordingly, the Arbitration Original Petition is allowed.

14. Insofar as the Section 9 Application pending in the above



Arb.O.P.(Comm.Div.) No.495 of 2024

WEB COPY

proceedings, the learned counsel for the Respondent has given undertaking that no new students would be inducted. The said undertaking shall be in force for a period of six weeks from today. In the meantime, the said Application shall be converted as an Application under Section 17 of the Act and the Arbitrator shall decide the same in accordance with law, after affording opportunity to both the parties.

21.12.2024

rkp

Index : Yes / No

Internet : Yes / No

P.B.BALAJI, J.,



WEB COPY



Arb.O.P.(Comm.Div.) No.495 of 2024

rkp

Pre-delivery Order in
Arb.O.P.(Comm.Div.) No.495 of 2024
and O.A. No.854 of 2024

21.12.2024