



CRP(MD).No.1176 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1176 of 2022 and
CMP(MD).No.4821 of 2022

G.T.L. Infrastructure Limited (GIL),
reg. Office at Electronic Sadan,
No.1, TTC Industrial Area, MIDC,
Mahape, Navi, Mumbai – 400 710

: Petitioner / defendant

Vs.

B.Mangalam

: Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order passed in CMA.No.4 of 2020 by the learned Subordinate Judge, Thirumangalam dated 05.03.2022 filed against the order, dated 27.04.2019 in I.A.No.30 of 2019 in O.S.No.252 of 2015 passed by the file of the Additional District Munsif,, Thirumangalam.

For Petitioner : Mr.M.Rajaraman

For respondent : Mr.S. Karthick

ORDER

The present revision is preferred against the order, dated 05.03.2022



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made in C.M.A.No.4 of 2020 on the file of the Subordinate Court, Thirumangalam filed against the order, dated 27.04.2019 made in I.A.No. 30 of 2019 in O.S.No.252 of 2015 on the file of the Additional District Munsif, Thirumangalam.

2. The facts of the case is that the suit in O.S.No.252 of 2015 was filed by the respondent / plaintiff for recovery of possession. Pending suit, revision petitioner / defendant preferred an application in I.A.No.30 of 2019 under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the matter to an arbitrator as per the clause provided under the lease agreement. The said application was allowed by the Additional District Munsif, Thirumangalam, which was challenged by the respondent / plaintiff in CMA.No.4 of 2020 before the learned Subordinate Judge, Thirumangalam. The said CMA was allowed on 05.03.2022. Against which the present revision is preferred.

3. The learned counsel appearing for the revision petitioner / defendant would submit that in the impugned order it is wrongly stated that the defendant has only filed the xerox copy of lease agreement, dated 23.07.2010 and the same was only signed by the plaintiff and not by the



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defendant. Whereas the original lease deed was filed even before the trial Court along with a petition under Section 8 of the Arbitration and Conciliation Act, 1996 without considering the name, the first Appellate Court erroneously allowed the appeal, which requires consideration by this Court.

4. On the other hand, the learned counsel appearing for the respondent / plaintiff would submit that the lease agreement itself is expired and therefore, the same cannot be referred to arbitrator for consideration and therefore, the order passed by the trial Court requires no interference by this Court.

5. Heard both sides and perused the materials available on record.

6. On perusal of the records it is seen that the original lease agreement, dated 23.07.2010 has been filed along with the said application in I.A.No.30 of 2019. However, the appellate Court erroneously held that the petitioner / defendant produced only certified copy of the lease agreement and allowed the CMA.No.4 of 2020, which is in correct. Moreover, the petitioner has relied upon the Judgment of this Court, dated



28.03.2022 made in **Arbitration O.P (com. Div).No.73 of 2021** in which it is held that even when the agreement is expired, reference to the Arbitrator is maintainable. The relevant paragraph No.10 of the said order is extracted hereunder:

10. The first point is, primary Contract getting effaced owing to “Sammatha Pathiram”, dated 24.12.2018. The law is well settled that when a arbitration agreement between contracting parties is in the form of a clause / covenant in a contract, the termination or effacing of the Contract does not terminate or efface the arbitration agreement. This principle was laid down by Hon'ble Supreme Court in the oft quoted **Reva Electric Car Company Private Limited V. Green Mobil** case reported in (2012) 2 SCC arbitration clause which formed part of the contract has to be treated as an agreement independent of the other terms of the contract. To ensure that there is no misunderstanding Section 16(1)(b) further provides that even if the Arbitral Tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of the arbitration clause. Section 16(1)(a) presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of Section 16(1)(b), it continues to be enforceable notwithstanding a declaration of the contract being null and void. In view of the provisions contained in Section 16(1) of the Arbitration and Conciliation Act, 1996. It would not be possible to accept the submission of Ms.Ahmadi that which the



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termination of the MoU on 31.12.2007, the arbitration clause would also cease to exist.”

7. In view of the parameters laid down in the above referred Judgment the contentions made by the learned counsel for the respondent that the reference to arbitrator is not maintainable is un-sustainable. In view of the above, this Court feels that it would appropriate to remand back the the matter to the Appellate Court for fresh consideration. The Appellate Court is directed to dispose of the same within a period of two months from the date of receipt of a copy of this order on its own merits and in accordance with law.

8. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

26.11.2024

Index : Yes / No
Internet : Yes/ No
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To

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1. The Subordinate Judge,
Thirumangalam.
2. The Additional District Munsif,,
Thirumangalam.



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K. GOVINDARAJAN THILAKAVADI, J.,

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