



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-08-2025

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THE HON'BLE MR JUSTICE ABDUL QUDDHOSE

Arb O.P(COM.DIV.) No. 293 of 2025

1. Mr.Khursheed Anwar,
No.236,Mission Street,
Puducherry-605001.
2. Mrs.Pushpa Anwar.
No.236 Mission Street,
Puducherry-605001.

..Petitioner(s)

Vs

Mr.Kevin Dominic Pope,
The Proprietor of Le Chateau,
At No.11A Romain Rolland Street,
Puducherry-1.

..Respondent(s)

To appoint a Sole Arbitrator to decide the disputes and differences between the petitioner and respondent in terms of the lease agreement dated 27.11.2014

For Petitioner(s): MR S. VIJAYAKUMAR, Sr. COUNSEL

FOR M/S J. MELWIN JABAZ

For Respondent(s): MR P.L NARAYANAN, Sr.COUNSEL
FOR M/S. E.HARIHARAN
FOR RESPONDENT



ORDER

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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking for appointment of an Arbitrator by this Court.

2. There seems to be a dispute between the petitioners and the respondent arising out of the lease agreement dated 27.11.2014. The petitioners have invoked arbitration in accordance with the arbitration clause contained in the lease agreement dated 27.11.2014 by issuing notice to the respondent on 20.02.2025 to comply with the requirements of Section 21 of the Act. A reply has also been sent by the respondent on 27.02.2025 for the same. Since there is no consensus between the parties with regard to arbitration, the petitioner has filed this petition under Section 11 of the Act seeking for appointment of an Arbitrator by this Court.

3. A counter affidavit has been filed by the respondent disputing the contentions of the petitioners. The only objection raised by the respondent is that the dispute raised by the petitioners is not an arbitrable dispute, since it is governed by a special statute, namely, Pondicherry Buildings (Lease and Rent Control) Act, 1969, and therefore, the petitioners will have to approach the Rent

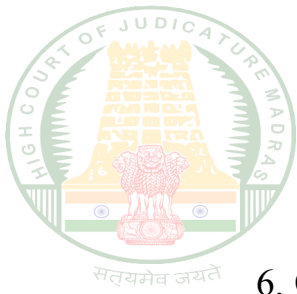


Controller and cannot go for arbitration as per the arbitration clause contained in the contract, which is the subject matter of the dispute between the parties. The respondent has also stated in the counter affidavit that they had incurred certain sums of monies on behalf of the petitioners in the property occupied by them as tenants. Therefore, according to the respondent, no monies are due and payable by the respondent to the petitioner and it is only the petitioners, who owe monies to the respondent.

4. The learned Senior Counsel for the respondent drew the attention of this Court to the following authorities, in support of his contention that the dispute raised by the petitioners is not an arbitrable dispute:-

- (a) Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. And others [2011 (5) SCC 532]; and
- (b) Vidya Drolia and others Vs. Durga Trading Corporation [2021 (2) SCC 1].

5. Relying upon the aforesaid authorities, the learned Senior counsel for the respondent would submit that all tenancy disputes governed by a special rent control statute is not an arbitrable dispute. Therefore, he would submit that the present petition filed under Section 11 of the Act is not maintainable in law.



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6. On the other hand, the learned Senior counsel for the petitioners would submit that the petitioners are only seeking compensation, which includes arrears of rent due and payable by the respondent to the petitioners. The petitioners are not seeking for eviction of the respondent from the property. Therefore, he would submit that the decisions relied upon by the learned Senior counsel for the respondent referred to supra have no bearing for the facts of the instant case.

DISCUSSION:-

7. The arbitration clause contained in the lease agreement dated 27.11.2014 is re-produced hereunder:-

“ARBITRATION:

All questions, differences and disputes arising between the parties hereto relating to any matter under this agreement, its performance, breach or termination either during the currency of this agreement or extension thereof, shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any modification or re-enactment thereof.

The Arbitrators may associate with themselves / himself or requisition the service of any expert as may be deemed fit or proper by them / him for the purpose of



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carrying on any inquiry, investigation or advice on any matter referred to them/him and expenses of such experts shall be borne by the parties in equal shares but such expenses may form part of cost awarded, if any to the party held entitled to.

It is a term of this agreement that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this article together with the amount or amounts claimed in respect of such dispute.

Any legal proceedings in the eventuality of Arbitration failing shall be subject to the jurisdiction of Puducherry.”

8. While deciding a petition under Section 11 of the Act, it is settled law that this Court is having only a limited scrutiny. Once there exists an arbitration clause in the contract, which is the subject matter of the dispute between the parties, and once this Court, on a prima-facie consideration, comes to the conclusion that the dispute raised by the petitioners is an arbitrable dispute and is not barred by limitation, has to necessarily appoint an Arbitrator as prayed for under Section 11 of the Act.

9. Infact, under Section 16 of the Act, the Arbitrator has got the power to rule on his jurisdiction with regard to the arbitrability of the dispute raised by



the petitioners and he is also empowered to consider the objections raised by the respondent through its counter affidavit filed in this petition before this Court.

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The decisions relied upon by the learned Senior counsel for the respondent on a prima-facie consideration have only prohibited arbitration insofar as eviction proceedings alone is concerned. Though the learned Senior counsel for the respondent would submit that all tenancy matters cannot be arbitrated and will have to be adjudicated only before the Rent Controller, the said contention cannot be accepted by this Court in view of the counter affidavit filed by the respondent before this Court that certain sums of monies are also due and payable by the petitioners to the respondent on account of renovation work done in the petitioners' rented premises.

10. In *SBI General Insurance Co. Ltd. Vs. Krish Spinning* [2024 (6) ALD 69]; and *Interplay between arbitration agreements under the Arbitration and Conciliation Act, 1996, and the Indian Stamp Act, 1899* [AIR 2024 SC 1], the Hon'ble Supreme Court has made it clear that the scope of judicial interference under Section 11(6-A) of the Act is only confined to the limited scrutiny of “prima-facie existence of the arbitration agreement, nothing more and nothing less” and the competence of the Arbitral Tribunal under Section 16 of the Act confers complete arbitral autonomy to rule, determine and act on the issues



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pertaining to impleadment or deletion of a party, signatory or non-signatory, arbitrability or non-arbitrability, necessary or not necessary party, joinder or non-joinder to the arbitration in depth even if the ruling is contrary to that of the referral court under Section 11 of the Act.

11. Therefore, while deciding a petition filed under Section 11 of the Act, the law is now well settled as seen from the decisions referred to supra that the referral court will have to look only into the prima-facie existence of the arbitration clause and once the court is satisfied that there exists an arbitration clause, necessarily, the court will have to refer the dispute to arbitration. Therefore, in the instant case, since there exists an arbitration clause in the lease agreement dated 27.11.2014, and since the petitioners have also complied with the requirements of Section 21 of the Act, and since there is no consensus between the parties with regard to the name of the Arbitrator, necessarily, this Court will have to appoint an Arbitrator as prayed for in this petition, leaving it open for the respondent to raise all objections including the objections raised by them through their counter affidavit filed before this Court either by filing an application under Section 16 of the Act or through the statement of defence in the arbitral proceedings. Accordingly, this petition is allowed as prayed for with the following directions:-



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(a) This Court hereby appoints Hon'ble Mr. Justice V. Bharathidasan, former Judge of this Court, residing at No.22, 2nd Main Road, Kamaraj Nagar, Thiruvannamipur, Chennai-41, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the lease agreement dated 27.11.2014.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration/fees as per the schedule agreed upon by the parties to the dispute.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) The respondent is at liberty to raise all objections including the objections, which have been raised through their counter affidavit filed before this Court, by filing an application under Section 16 of the Act before the Arbitrator, or through their statement of defence filed in the arbitral proceedings.



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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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