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Arb.O.P. (Com.Div.) No.421 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.08.2025

Pronounced on : 18.08.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P. (Com.Div.) No.421 of 2023

and

A. No.4638 of 2023

Aparna Philip

... Petitioner

Vs.

Dr. Jayalakshmi Shreedhar

... Respondent

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act to set aside the award dated 07.03.2023 and order dated 10.06.2022 in M.A. No.20 of 2022 filed under Section 16 of the Arbitration and Conciliation Act, 1996 passed by the Arbitral Tribunal.

For Petitioner : N.L. Rajah
Senior Counsel
for Thomas T. Jacob

For Respondent : Nalini Chidambaram
Senior Counsel
for N. R. R. Arun Natarajan



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ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned arbitral award dated 07.03.2023 passed in favour of the respondent against the petitioner.

2. Under the impugned arbitral award, the arbitrator has issued the following directions:

a) The petitioner was directed to pay a sum of Rs.25,66,762/- towards rental arrears to the respondent and interest along with 18% GST, after adjustment of advance and the petitioner was also made liable to pay interest at 9% on Rs.25,66,762/- from the date of the award till the date of payment;

b) The petitioner was also liable to pay damages at Rs.29,95,660/- together with interest at 9% to the respondent from the date of award till the date of payment;

c) The petitioner was also entitled to proportionate cost for the amounts awarded.



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3. The petitioner, who is the tenant, was the respondent and the respondent, who is the landlord, was the claimant in the arbitration.

4. The petitioner has challenged the impugned arbitral award on the following grounds:

a) The written lease agreement dated 20.02.2012 has been succeeded / replaced by the oral tenancy agreement not containing provisions for arbitration;

b) There is an error apparent in the order passed by the arbitrator in the application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 as the arbitrator has erroneously given a finding in the said order while dismissing the petitioner's application that "beyond the lease period originally stipulated, the lease must be deemed to continue under statutory tenancy that began through contractual tenancy governed by an arbitral agreement".

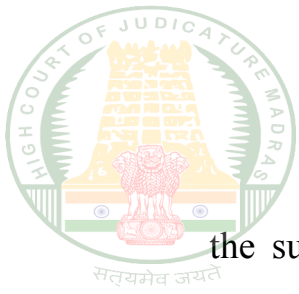
c) The objections, as to the unregistered lease agreement and insufficiently stamped lease agreement, are purely legal pleas, which can be raised at any stage.



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5. As seen from the grounds raised by the petitioner, who was a tenant under the respondent, the primary ground for challenge in this petition is that once the lease period under the lease agreement dated 20.02.2012 having got expired, the terms and conditions, which includes the arbitration clause, cannot be made applicable for the period after the expiry of the lease. In other words, the contention of the petitioner is that since the arbitral claim of the respondent arises out of the period after the expiry of the lease, the claim made by the respondent before the arbitrator is not an arbitrable dispute, as there is no arbitration agreement existing between the parties after the expiry of the lease under the lease agreement dated 20.02.2012.

6. According to the petitioner, the arbitrator has passed the arbitral award despite there being no arbitration agreement between the parties and also passed an erroneous order, dismissing the petitioner's application filed under Section 16 of the Arbitration and Conciliation Act, 1996. The petitioner contends that since the lease agreement dated 20.02.2012 got expired on 04.04.2018, after which date, the tenancy of the petitioner was governed by statutory monthly oral tenancy, none of



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the subsequent statutory monthly oral tenancy agreements had a valid provision for arbitration.

7. In support of the petitioner's contention, the learned senior counsel for the petitioner drew the attention of this Court to the following authorities:

a) ***SMS Tea Estates Vs. Chandmari Tea Company reported in 2011 (14) SCC 66***; This decision was relied upon in support of the proposition that if the parties had entered into two agreements and arbitration clause is found only in the first agreement and not in the second agreement, an arbitrator can be appointed only in respect of the disputes relating to the first agreement and not in respect of disputes relating to the second agreement;

b) ***Young Achievers Vs. IMS Learning Resources reported in 2013 (10) SCC 535***. This decision was relied upon by the learned senior counsel for the petitioner in support of his contention that "arbitration clause cannot survive, if the agreement containing the arbitration clause has been superseded / novated by a later agreement";.



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c) *Sure Ranga Murali Reddy Vs. Sure Yerri Vara Prasada Reddy*

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reported in 2018 (4) ALT 616. This decision was relied upon by the learned senior counsel for the petitioner in support of his contention that the objection as to non-stamping and non registration of the document can be considered by the Court at any stage.

8. The learned senior counsel appearing for the petitioner summarises his submissions by stating as follows:

a) The lease agreement dated 20.02.2012, having got expired on 04.04.2018, after which date, the tenancy of the petitioner was governed by statutory monthly oral tenancy agreement and thereafter, none of the subsequent statutory monthly oral tenancy agreements had a valid provision for arbitration;

b) The arbitration clause in an agreement and it cannot survive if the agreement containing an arbitration clause has been superseded / novated by a later agreement;

c) The arbitrator in the order passed in the application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 has committed an error apparent in the said order, dismissing the



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petitioner's application by erroneously holding that beyond the lease period originally stipulated, the lease must be deemed to continue under the statutory tenancy that began through contractual tenancy governed by an arbitral agreement;

d) There is no bar under law to raise the plea of insufficiently stamped lease agreement dated 20.02.2012 at any stage. The admissibility of an unregistered lease, which is compulsorily registrable, even though such document was marked as an exhibit, more particularly, when such marking was given inadvertently and without application of mind, can be raised at any stage even in a proceeding filed under Section 34 of the Arbitration and Conciliation Act, 1996.

9. On the other hand, the learned senior counsel appearing for the respondent would submit as follows:

a) The Honourable Supreme Court in the Seven Judges Bench Judgment (*INRE - Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act*) dated 13.12.2023 has made it clear that objections relating to stamping of the agreement fall within the ambit of the arbitral Tribunal. Since the



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petitioner did not raise the issue of under stamped lease agreement before the arbitrator, either through her application filed under Section 16 of the Arbitration and Conciliation Act, 1996 or through her statement of defence filed in the main arbitral claim, the petitioner cannot raise such a defence in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, where the scope of this Court to interfere with the impugned arbitral award is very limited;

b) Beyond the lease period, originally stipulated in the lease deed i.e., beyond 04.04.2018, the lease must be deemed to continue under statutory tenancy. The petitioner handed over the key of the demised premises to the respondent / landlord only on 29.11.2021. The petitioner / tenant had all the protection of a statutory tenant akin to a contractual tenant. The arbitrator, under the impugned arbitral award, has correctly determined the arrears of rent payable by the petitioner to the respondent from April 2020 to November, 2021. Thus, the landlord and tenant relationship existed between the petitioner and the respondent until 29.11.2021 when the petitioner handed over the possession of the demised premises back to the respondent.



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Discussion:

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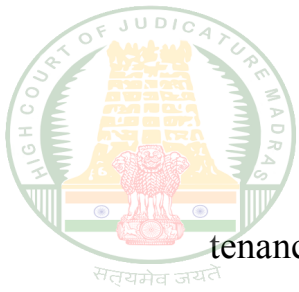
10. The petitioner has raised the following legal issues for challenging the impugned arbitral award:

a) The clause for arbitration contained in the lease deed is no longer operative since the lease deed expired in 04.04.2018 and therefore, the arbitral reference sought as per the arbitration clause contained in the expired lease deed is invalid;

b) The lease deed which is the subject matter of dispute between the parties has been insufficiently stamped and is unregistered and hence, is not admissible in evidence. A legal plea, questioning the admissibility of the lease deed as a piece of evidence, can be raised at any stage eventhough the said plea was not taken before the arbitrator;

c) Apart from raising the aforementioned legal issues in this petition, the petitioner has not raised any other dispute with regard to the amount determined by the Arbitrator, which the Arbitrator has directed the petitioner to pay the respondent.

11. The arbitrator under the impugned arbitral award has held that the petitioner, on the expiry of the lease deed, having continued with the



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tenancy, is deemed to be a statutory tenant. The arbitrator has, therefore, held that the arbitration clause in the lease deed is an independent arbitration agreement and is unaffected by the non registration of the lease deed.

12. The following are the undisputed facts:

a) The arbitrator, who has passed the impugned arbitral award was appointed by this Court in a petition filed by the respondent under Section 11 of the Arbitration and Conciliation Act, 1996 and the petitioner had also consented for this Court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996;

b) The petitioner did not raise any objection before the arbitrator, who has passed the impugned arbitral award with regard to the insufficient stamping and non registration of the lease deed;

c) Even in the application filed by the petitioner before the arbitrator, under Section 16 of the Arbitration and Conciliation Act, 1996, the petitioner did not raise any objection with regard to the insufficient stamping and non registration of the lease deed;



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d) Only for the first time before this Court, in this petition under

Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has raised objections, questioning the admissibility of the lease deed as a piece of evidence on the ground that the lease deed is an insufficiently stamped and unregistered document.

13. As per Section 19 of the Arbitration and Conciliation Act, 1996, the arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. The very same section also makes it clear that the power of the arbitral Tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

14. Section 19 of the Arbitration and Conciliation Act, 1996 reads as follows:

"19. Determination of rules of procedure.—

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to



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agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence. "

15. Kompetenz-Kompetenz principle also known as competence competence principle, is a cornerstone of the arbitration law. It grants arbitral Tribunal, the authority to rule on its own jurisdiction, including the challenges to the validity of the arbitration agreement. The principle aims to minimize Court intervention and to improve the autonomy of the arbitral process.



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16. Competence-Competence principle is enshrined in Section 16 of the Arbitration and Conciliation Act, 1996. This section specifically empowers the arbitral Tribunal to rule on its own jurisdiction. Section 16 of the Arbitration and Conciliation Act, 1996 reads as follows:

"16. Competence of arbitral tribunal to rule on its jurisdiction.—

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a



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plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section



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34."

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17. While the arbitral Tribunal has the primary power to rule on its jurisdiction, Courts may intervene only under the circumstances, where the arbitral Tribunal has clearly exceeded its powers or when there is serious procedural irregularities. In the case on hand, the petitioner questioned the arbitrability of the dispute by filing an application under Section 16 of the Arbitration and Conciliation Act, 1996. The arbitrator has dismissed the said application by following the decision rendered by the Honourable Supreme Court in the case of ***SMS Tea Estates Vs. Chandmari Tea Company reported in 2011 (14) SCC 66*** and by holding that the arbitration clause contained in the lease deed still operates even beyond the period of lease since the lease must be deemed to continue under statutory tenancy that began through the contractual tenancy governed by an arbitration agreement. Therefore, the arbitrator has rejected the petitioner's contention that the arbitration agreement found in the lease deed cannot apply.



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18. The arbitrator has also held, both in his order passed in the Section 16 application filed by the petitioner as well as in the impugned arbitral award that the arbitration agreement found in the lease deed is binding on the petitioner. Only with the concurrence of the petitioner, the arbitrator was appointed by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 through this Court's order dated 05.04.2022. This Court does not find any infirmity in the findings of the arbitrator with regard to the arbitrability of the dispute and therefore, the petitioner is estopped from questioning the reference of the dispute to arbitration. Section 34 Courts have limited jurisdiction to review the award.

19. In the recent decision rendered by the Honourable Supreme Court in ***INRE - Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act dated 13.12.2023***, the Honourable Supreme Court has elaborately dealt with every aspect of Stamp Act, Arbitration and Conciliation Act, 1996 and the Contract Act in the seven Judge Bench Judgment.



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WEB COPY 20. The Honourable Supreme Court, in the aforesaid Judgment has observed as follows:

- a) It is clear understanding that the challenge before the Court is to harmonise the provisions of the Arbitration Act and the Stamp Act;
- b) The object of the Arbitration Act is to inter-alia ensure an efficacious process of arbitration and minimize supervisory role of the Courts in the arbitration process;
- c) On the other hand, the object of the Stamp Act is to secure revenue for the State;
- d) It is a cardinal principle of interpretation of statutes that provisions contained in two statutes must be, if possible, interpreted in a harmonious manner to give full effect to both the statutes.

21. The Honourable Supreme Court in the aforesaid Judgment, ***(INRE - Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act dated 13.12.2023)***, discussed the primacy of Arbitration Act for arbitration agreements over Contract Act and Stamp Act. The reasons given by the

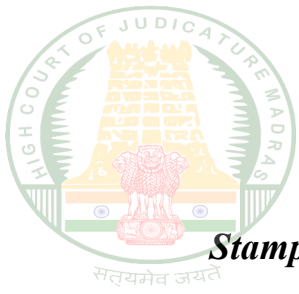


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Honourable Supreme Court for coming to the said conclusion are as follows:

- a) Arbitration Act is a special law, whereas, Indian Contract Act and Stamp Act are general laws;
- b) The scope of Section 5 of the Arbitration and Conciliation Act, 1996, restricts the scope of judicial intervention. The Courts can only intervene, if the same is provided in the Arbitration Act;
- c) The Court further observed that one of the primary objectives of the Arbitration Act was to minimize the supervisory role of the Courts in the arbitral process;
- d) Parliament was aware of the Stamp Act, when it enacted the Arbitration Act, thus despite being aware of the mandate of Section 33 of the Stamp Act, the Parliament at the time of enactment of Arbitration Act, did not specify stamping as a pre-condition to the existence of a valid arbitration agreement.

22. In the seven Judge Bench Judgment of the Honourable Supreme Court in ***INRE - Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian***



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Stamp Act dated 13.12.2023, though the decision rendered by the Honourable Supreme Court in ***SMS Tea Estates Vs. Chandmari Tea Company reported in 2011 (14) SCC 66*** was overruled, the Honourable Supreme Court in the seven Judge Bench Judgment was only dealing with insufficiently stamped agreements and did not deal with the arbitrability of the dispute.

23. Under the impugned arbitral award, the arbitrator held that the clause of arbitration in the lease deed operates as an independent arbitration agreement unaffected by the expiry of the lease period since the petitioner has held over the tenancy even after the expiry of the lease and has become a statutory tenant.

24. The view arrived by the Honourable Supreme Court in ***SMS Tea Estates Vs. Chandmari Tea Company reported in 2011 (14) SCC 66*** that the clause of arbitration operates as an independent agreement unaffected by the need for registration of the document was not altered / revised by the Honourable Supreme Court in the seven Judge Bench Judgment in the case of ***INRE - Interplay between Arbitration***



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Agreements under the Arbitration and Conciliation Act, 1996 and the

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Indian Stamp Act. The Honourable Supreme Court in the aforesaid decision has only held that inadequately stamped documents are inadmissible in evidence under Section 35 of the Stamp Act, but, however, held that non stamping or inadequate stamping is a curable defect.

25. It was also made clear in the seven Judge Bench Judgment of the Honourable Supreme Court, referred to supra, that any objection raised in relation to the stamping of the agreement fall within the ambit of the arbitral Tribunal.

26. Section 116 of the Transfer of Property Act, 1882 reads as follows:

"116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or



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*otherwise assents to his continuing in possession,
the lease is, in the absence of an agreement to the
contrary, renewed from year to year, or from month
to month, according to the purpose for which the
property is leased, as specified in section 106. "*

27. The decision relied upon by the learned senior counsel for the petitioner in ***Young Achievers Vs. IMS Learning Resources reported in 2013 (10) SCC 535*** has got no bearing to the facts of the instant case. In the aforesaid decision, there was a new agreement entered into between the parties and the new agreement did not make any provisions in respect of any disputes arising under the original agreement and it also did not contain an arbitration clause and only under those circumstances, the Honourable Supreme Court held that the new agreement is pure and simple novation of the original contract by mutual consent and therefore, the arbitration clause contained in the original agreement is not binding on the new agreement.



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28. In the case on hand, the arbitrator has rightly held that on the expiry of the period of the lease, the petitioner has become a statutory tenant as per the provisions of Section 116 of the Transfer of Property Act, 1882 and the arbitration clause contained in the lease deed continues to bind the petitioner even after the expiry of the lease as the petitioner has continued to occupy the demised premises as a lessee upto 29.11.2021.

29. Similarly, the decision of the Telangana High Court in the case of ***Sure Ranga Murali Reddy Vs. Sure Yerri Vara Prasada Reddy reported in 2018 (4) ALT 616*** has no bearing to the facts of the instant case since, in the instant case, the petitioner never raised any objection with regard to the insufficiently stamped lease deed and its non registration before the arbitrator. Eventhough, in regular civil cases objections can be raised at any stage with regard to the inadmissibility of the subject document as a piece of evidence, the said proposition cannot be applied in stricto sensu in arbitration matters. In arbitration matters, the legislature has thought it fit to minimize Court's interventions by restricting the Court's intervention to the powers vested with the Courts

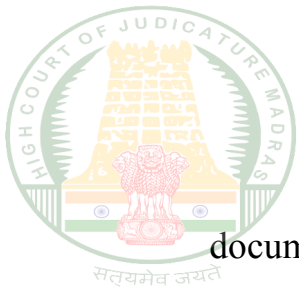


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under the provisions of the Arbitration and Conciliation Act, 1996. That is the reason, why under Section 19 of the Arbitration and Conciliation Act, 1996, it has been made clear that the arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or the provisions of the Indian Evidence Act, 1872.

30. Section 19 of the Arbitration and Conciliation Act, 1996 also makes it clear that the arbitrator is also empowered to determine the admissibility, relevance, materiality and weight of any evidence. Only through sound reasoning, the arbitrator in the impugned arbitral award as well as in his order, dismissing the petitioner's petition filed under Section 16 of the Arbitration and Conciliation Act, 1996 has held that the petitioner is bound by the arbitration clause contained in the expired lease deed as the petitioner has continued her tenancy even after the expiry of the said lease and is a statutory tenant.

31. The object of the Arbitration and Conciliation Act, 1996 is to minimize Court interventions and ensure a fair, efficient and time saving dispute resolution process. If a new plea viz., insufficient stamping of



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documents or non registration of documents is raised for the first time, through this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the object of the Arbitration and Conciliation Act, 1996 will get defeated as it will result in the delay in the final adjudication of the dispute. Having not raised the defence of insufficient stamping and non registration of the lease deed before the arbitrator, the petitioner cannot raise the said ground in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

32. The arbitrator, for coming to the conclusion that the arbitration clause contained in the expired lease deed is binding on the petitioner, has given valid reasons for arriving at such a conclusion and the same is self explanatory from the impugned arbitral award. Therefore, the question of interfering with the impugned arbitral award by this Court does not arise.

33. There is no patent illegality committed by the arbitrator while passing the impugned arbitral award. The impugned arbitral award is also not opposed to public policy. None of the grounds falling within the



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purview of Section 34 of the Arbitration and Conciliation Act, 1996 has
been satisfied by the petitioner.

34. In the result, there is no merit in this petition. Accordingly, this
petition is dismissed. No Costs. Consequently, connected application is
closed.

18.08.2025

Index: Yes
Speaking order / Non speaking order
Neutral citation : Yes
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ABDUL QUDDHOSE, J.

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Pre-delivery order in

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