

S.Rajeswari vs Mr.L.Ramesh on 21 January, 2021

Author: M.Sundar

Bench: M.Sundar

O.P.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2021

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.35 of 2021

and

A.No.102 of 2021

S.Rajeswari
D/o.M.Sarangapani
Flat No.106, ETA Jasmine Court
First Floor, 'C' Block
Kattupakkam,
Chennai-600 056.

... Pet

vs.

Mr.L.Ramesh
S/o.K.R.Lakshminarayanan
P.O.Box No.1750
Ruwi, Muscat, Sultanate of Oman
Postal Code - 112.

... Res

Original Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award dated 12.12.2015 in Arbitration No.1 of 2015 passed by the Hon'ble Arbitral Tribunal pertaining to the dispute between the petitioner and the respondent.

For petitioner	:	Mr.B.Ravi Raja
For respondent	:	Mr.M.Murali Adikesavan

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<https://www.mhc.tn.gov.in/judis/>

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ORDER

Captioned 'Original Petition' [hereinafter 'OP' for the sake of brevity] is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, convenience and clarity. Captioned OP has been filed assailing an 'arbitral award dated 12.12.2017' [hereinafter 'impugned award' for the sake of brevity, convenience and clarity] made by a 'Arbitral Tribunal' ['AT' for the sake of brevity, convenience and clarity] constituted by a sole arbitrator.

2. Owing to the short statutory perimeter of Section 34 of A and C Act or in other words owing to the limited legal landscape within which a legal drill of testing an arbitral award under Section 34 of A and C Act should perambulate, short facts shorn of elaboration will suffice. To put it differently, factual matrix in a nutshell containing essential facts imperative for appreciating this order will suffice.

3. 'Flat No.106, ETA, Jasmine Court, First Floor, C Block, Kattupakkam, Chennai-600 056 measuring an extent of 1402 sq.feet' <https://www.mhc.tn.gov.in/judis/> [hereinafter 'demised Flat' for the sake of convenience and clarity] and a lease deed dated 05.03.2010 between the parties to the captioned OP constitute the nucleus of lis between the parties before AT. If this demised Flat and lease deed constitute the nucleus of captioned OP, disputes that erupted between parties in captioned OP pertaining to lease of this demised Flat can be described as epicenter of lis before AT. To be noted, lone respondent before me in captioned OP is the owner of demised Flat and is the lessor and sole petitioner in captioned OP is lessee qua demised Flat.

4. Short facts are that lease of demised Flat was originally in and by a lease deed dated 05.03.2010; that lease was terminated, but termination was revisited by parties and lease stood extended; that lease was extended from time to time and there was also increase in monthly rent; that monthly rent was originally Rs.15,000/- and it stood as Rs.22,000/- per month at the time of eruption of disputes; that from hereon 'petitioner' in captioned OP shall be referred to as 'lessee' and 'respondent' in captioned OP shall be referred to as 'lessor'; that at the time of inception of lease, lessee had paid a refundable advance and had also agreed to pay maintenance charges; that dispute/lis essentially centers around alleged non-payment of monthly rent by lessee <https://www.mhc.tn.gov.in/judis/> from June of 2011; that there was no disputation or disagreement that there is an arbitration clause in the lease deed dated 05.03.2010 and this arbitration clause serves as arbitration agreement between lessor and lessee being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act; that lessor filed O.P.No.766 of 2012 in this Hon'ble Court under Section 11 of A and C Act and this Hon'ble Court appointed a sole arbitrator in and by an order dated 06.03.2015; that the sole arbitrator, who constituted AT entered upon reference adjudicated upon lis between lessor, lessee and made the impugned award; that assailing the impugned award, captioned OP has been filed.

5. This Court having set out the factual matrix in a nutshell which also captures the trajectory this matter has taken in reaching this Court vide captioned OP, now proceeds to deal with submissions advanced by Mr.B.Ravi Raja, learned counsel for lessee, who is petitioner before me.

6. Learned counsel for petitioner made submissions assailing the impugned award, a summation of which is as follows:

(a) There was an oral agreement between lessor and <https://www.mhc.tn.gov.in/judis/> lessee for the lessee to purchase the demised Flat, but this aspect has not been considered in the impugned award.

(b) Lessor lives abroad and signatures in arbitral proceedings appear to be forged.

(c) A signed copy of impugned award has not been delivered to the lessee.

7. Before this Court proceeds to deal with aforementioned submissions, it is necessary to record some peripheral but important facts/aspects of this matter.

8. Learned counsel for petitioner very fairly submitted that the erstwhile 'Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960)' [hereinafter 'Rent Control Act' for the sake of convenience and brevity] was not applicable to the case on hand. To be noted, this Court is informed that this erstwhile statute has now been replaced by a new statute on and from 22.02.2019. Be that as it may, learned counsel also went on to submit that Vidya Drolia case in Vidya Drolia & Ors. Vs.Durga Trading Corporation reported in 2019 SCOnline SC 358, <https://www.mhc.tn.gov.in/judis/> which was referred to a larger Bench has since been decided by Hon'ble Supreme Court vide an order dated 14.12.2020. Therefore, learned counsel submits that as erstwhile special statute did not apply to the demised Flat even on the date on which cause of action arose arbitrability issue (though raised before AT) now stands doused.

9. Be that as it may, with regard to Vidya Drolia larger Bench order, the same was referred to by a coordinate Bench of Hon'ble Supreme Court in a subsequent case being Suresh Shah Vs. Hipad Technology India Private Limited, reported in 2020 SCC Online SC 1038. The most relevant paragraph in Vidya Drolia regarding above arbitrability issue that arises in the case on hand, is Paragraph No.18, which reads as follows:

'18. In the backdrop of the above discussion, we are of the considered view that insofar as eviction or tenancy relating to matters governed by special statutes where the tenant enjoys statutory protection against eviction whereunder the Court/Forum is specified and conferred jurisdiction under the statute alone can adjudicate such matters. Hence in such cases the dispute is non- arbitrable. If the special statutes do not apply to the premises/property and the lease/tenancy created thereunder as on the date when the cause of action arises to seek for eviction or such other relief and in such transaction if the parties are governed by an Arbitration Clause; the dispute between the parties is arbitrable and there shall be no impediment whatsoever to invoke the Arbitration Clause. This view is fortified by the opinion expressed by the Co-ordinate Bench while answering the <https://www.mhc.tn.gov.in/judis/> reference made in the case of Vidya Drolia wherein the view taken in Himangni Enterprises is overruled.'

10. Aforementioned Paragraph No.18 of Suresh Shah case rendered by another coordinate Bench of Hon'ble Supreme Court i.e., three member Hon'ble Bench of Supreme Court, has very succinctly set out the answer to reference qua Vidya Drolia case, which is relevant to the case on hand. Therefore, Paragraph No.18 of Suresh Shah case has been profitably extracted and reproduced supra. In this regard, this Court is also informed that the lessor had erroneously filed a Rent Control OP under erstwhile Rent Contral Act in District Munsif Court, Poonamallee, the same was returned and it was not pursued. To be noted, returned Rent Control OP under erstwhile Rent Contraol Act has been marked as Ex.C8 before AT.

11. This Court also deems it appropriate to extract procedural history, issues framed by AT and operative portion of impugned award.

12. 8 issues framed by AT are set out in Paragraph No.29 of impugned award and the same reads as follows:

<https://www.mhc.tn.gov.in/judis/> '1. Whether the respondent is a tenant under the Claimant?

2. Whether the respondent has wilfully failed to pay the rent from June 2011 to June 2015?

3. Whether the respondent has committed wilful default in payment of the rent?

4. Whether the schedule property lies under Kattupakkam Panchayat?

5. Whether the arbitration proceedings will lie in respect of the schedule property located under Kattupakkam Panchayat?

6. Whether the respondent has paid the rent from June 2015 till date as per the order dated 03.11.2015 passed by the Arbitrator in Section 17 application filed by the claimant?

7. Whether the respondent is liable to bear the costs?

8. To what reliefs the claimant is entitled to?'

13. Procedural history of arbitral proceedings are captured in Paragraph Nos.17, 19, 20, 22 to 28 of impugned award and the same read as follows:

'17. The claimant on 24.08.2015 filed an objection dated 20.08.2015 to the memorandum dated 20.08.2015 filed by the respondent contending as follows:

a. The suit schedule property is located at Kattupakkam Village and the same is coming under the Panchayat Union.

b. Rent Control proceedings cannot be invoked for areas which are not notified the Government of Tamil Nadu and <https://www.mhc.tn.gov.in/judis/> Kattupakkam Village is not a notified area.

c. Under Section 16 of the Arbitration and Conciliation Act, an application has not been filed for questioning the jurisdiction of the arbitration proceedings.

19. The respondent thereafter filed a reply dated 14.09.2015 stating that the return by the District Munsif Court is only in respect of that particular Court. The very appointment of the Arbitrator is against the letter and spirit of the rental agreement and the Arbitrator is estopped to proceed further along with the claimant's request.

20. The claimant filed a reply dated 29.09.2015 reiterating that the suit schedule property does not fall within the notified area and the Tamil Nadu Buildings (Lease and Rent Control) Act will not apply in respect of the suit schedule property. The claimant has also enclosed the tax receipt for the petition premises which has been issued by Kattupakkam Panchayat (Ex.C9).

22. Thereafter the claimant filed a rejoinder dated 12.02.2016 stating that the respondent filed a suit in O.S.No.3 of 2012 before the Principal District Munsif Court, Poonamallee and the same was pending. During the pendency of the above suit, the respondent could not have paid the rent in cash and without taking the rental receipt. The claimant further stated that the respondent had admitted that she had done modification to the flooring of the balcony and kitchen and the onus is on the respondent to show that the respondent had taken the prior permission of the claimant before carrying out the modification. The claimant further stated the respondent had paid the monthly rent from March 2010 till May 2011 by cheque and after the order dated 3.11.2015 passed by the Arbitrator, the respondent paid the rent from August 2015 till November 2015 by cheque. Hence the claimant contended that the respondent never paid the rent by cash. The claimant further contended that the respondent in his counter statement did not oppose the relief sought by the claimant in the claim statement and the respondent only sought not to disturb with her possession of the subject property without following the due process of law and sought for a direction under the provisions of the Tamil Nadu Building (Lease and Rent Control) Act, 1960. The claimant prayed to allow the claim statement filed by the claimant.

23. The claimant filed a proof affidavit dated 17.03.2016 and the following documents were marked as Exhibits C1 to C7 which are as follows C1) Rental Agreement dated 05.03.2010, C2) Renewal Rental Agreement dated March, 2011, C3) Legal Notice sent to respondent, C4) Return Cover, C5) Bank Statement from 01.03.2010 to 28.01.2012, C6) Decree and Judgment passed by the Hon'ble District Munsif in O.S.No.3 of 2012 dated 13.01.2015, C7) Bank Statement from 02.12.2015 to 11.03.2016.

24. The case was posted on 17.03.2016 for cross examination of the claimant witness and on the request of the counsel of the respondent, the cross examination of the claimant witness was posted on 19.03.2016. On 19.03.2016, the counsel for the respondent cross examined the claimant witness.

25. On 19.03.2016, the counsel for the claimant filed a memo dated 19.03.2016 stating that by order dated 03.11.2015, the Arbitrator directed the respondent to remit the arrears of monthly <https://www.mhc.tn.gov.in/judis/> rent from June, 2015 till October, 2015 amounting to Rs.1,10,000 within a period of 4 weeks from today to the bank account of the claimant. The respondent was further directed to remit the monthly rent from November, 2015 on or before of 10th of every month to the bank account of the claimant and the respondent was directed to file a proof of the above payment before the Arbitrator within a period of 4 weeks from the date of receipt of this order and thereafter periodically. However the respondent has paid the rents only for three months and the respondent has not paid the rents for two months. Further the respondent has not paid the rents from November, 2015. The claimant prayed for a direction to the respondent to comply with the order dated 03.11.2015 passed by the Arbitrator.

26. The respondent filed an objection dated 28.03.2016 to the memo filed by the claimant stating that due to heavy rain and floods, the earning capacity of the respondent has been affected and due to the same, the respondent could not remit the rents for the months of June, 2015 and July, 2015. The respondent further stated that the claimant has not remitted the maintenance charges to the Apartment Owners Association and due to the same, the water supply to the subject property was disconnected. Hence, the respondent contended that the respondent will pay the rents for June and July, 2015 and the future rents only after the claimant pay the maintenance charges to the Apartment Owners Association.

27. The respondent filed a Sur Rejoinder dated 28.03.2016 stating that the District Munsif Court dismissed O.S.No.3 of 2012 in view of the claimant and the respondent agreeing to refer the <https://www.mhc.tn.gov.in/judis/> disputes for arbitration. The respondent further stated that the claimant has not remitted the maintenance charges to the Apartment Owners Association and due to the same, the water supply to the subject property was disconnected. Hence the respondent contended that the respondent will pay the rents for June and July, 2015 and the future rents only after the claimant pays the maintenance charges to the Apartment Owners Association. The respondent prayed that the claimant should be restrained from disturbing the respondent's peaceful possession of the subject property, direct the claimant to remit the maintenance charges to the Apartment Owners Association and render supply of basic amenities to the subject property.

28. The respondent also filed a proof affidavit dated 28.03.2016 and submitted the following documents in support of her case:-

1. 07.04.2012- Status report by ICICI Bank upto 07.04.2002 of the claimant account statement.

2. 14.09.2015 - My letter dated 14.09.2015 enclosed Karnataka bank cheque 014352, dated 14.09.2015.

3. 11.12.2015 - ICICI Bank three chalan dated 11.12.2015.

4. Karnataka Bank, Account Statement of mine from 28.07.2015 to 21.12.2015.'

14. Operative portion of the impugned award is articulated in Paragraph No.56 of impugned award and the same reads as follows:

<https://www.mhc.tn.gov.in/judis/> 'Accordingly, an Award is passed:

I. Directing the respondent to pay the claimant, a sum of Rs.16,30,000/- inclusive of rent till December 2017 (Rupees Sixteen Lakhs Thirty Thousand Only) within two months from the date of the Award.

II. Directing the respondent to pay the claimant, the sum of Rs.2,92,000/- towards costs.

III. Directing the respondent will pay interest to the claimant @ 9% after two months from the date of the award till the date of the payment on the gross amount of Rs.19,22,000/- (Rupees Nineteen Lakhs Twenty Two Thousand Only), being the total of (I) and (II) above and if the respondent fails to make the payment within two months from the date of the award then she will be liable to pay interest from the date of the award itself.

IV. Directing the respondent to pay a sum of Rs.22,000/- to the claimant payable every month towards monthly rent for use of the subject property with effect from January 2018 failing which the claimant can initiate appropriate proceeding for eviction of the respondent from the subject property.'

15. Procedural history (extracted and reproduced supra) remains undisputed and that leaves this Court with the considered view that adequate opportunity has been given to lessee and in any event there is no serious issue that has been urged in this regard.

<https://www.mhc.tn.gov.in/judis/>

16. This Court now proceeds to consider submissions made by learned counsel, summation of which has been set out supra.

17. With regard to oral agreement to purchase demised flat, there is nothing to demonstrate that this was one of the issues which was submitted to arbitration. Absent any material to demonstrate that this was submitted to arbitration, in the considered view of this Court this argument does not aid lessee, who is protagonist in captioned OP. With regard to signatures appearing to be forged in arbitral proceedings, that is exclusively in the domain of evidence before AT, AT has entertained proof affidavit filed by lessor/claimant and therefore, this Court does not intend to enter into that arena which calls for re-appreciation of evidence. This Court also reminds itself that Section 34 of A and C Act is a summary procedure. To be noted, in Fiza Developers case, in Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited reported in (2009) 17 SCC 796, Hon'ble Supreme Court has held that Section 34 legal drill is a one issue summary procedure. Also to be noted, Fiza Developers case was reiterated by Hon'ble Supreme Court subsequently in Emkay Global case [Emkay Global <https://www.mhc.tn.gov.in/judis/> Financial Services Ltd. v. Girdhar Sondhi reported in (2018) 9 SCC 49] as a step in the right direction. Thereafter, Fiza Developers case and Emkay Global principle were further reiterated in Canara Nidhi Limited case [M/S. Canara Nidhi Limited vs M. Shashikala reported in 2019 SCC Online SC 1244]. Hon'ble Supreme Court has also elucidatively explained that 'one issue summary procedure' does not mean that the lis itself should turn on one issue but the arbitral award being put to challenge in a Section 34 application by itself becomes the issue. This Section 34 being a one issue summary procedure viewed in the light of faint submission that has been made regarding forged signatures, this Court considers this to be a ground which is not adequate enough to aid petitioner in her endeavour to dislodge the impugned award in the facts and circumstances of the case on hand.

18. This takes us to the point regarding signed copy of the impugned award not being delivered to lessee. A perusal of the case file placed before me reveals that predecessor Hon'ble Judge at the pre-numbering stage of captioned OP i.e., OP Diary No.125272 of 2019, had examined this aspect of the matter (by requisitioning records of AT) for the purpose of testing whether captioned OP has been filed within time. Predecessor Hon'ble Judge <https://www.mhc.tn.gov.in/judis/> had summoned records of AT and had noticed that the original impugned award was not served on petitioner lessee, instead it had been lodged in the Madras High Court Arbitration Centre.

19. At this juncture, Mr.Murali Adikesavan, learned counsel, who joined the hearing and who submitted that he had instructions to represent lessor, (if this Court is inclined to issue notice) requested audience for his say on this aspect of the matter. Learned counsel pointed out that the lessee evaded receipt of the impugned award and therefore, AT had to inevitably lodge the original award in the Madras High Court Arbitration centre. Responding to this, learned counsel for petitioner drew the attention of this Court to a communication dated 23.11.2018 (inter-alia requesting for impugned award) which has been mailed by speed post with acknowledgement due to the AT. This communication has been served on AT, but there was no response. This essentially turns on whether lessee was not inclined to receive the award and whether the AT was constrained to lodge the award in the arbitration centre which would become a mini trial of sorts. Owing to peculiar facts and circumstances of this case and more particularly, owing to the trajectory this matter has taken in pre-numbering <https://www.mhc.tn.gov.in/judis/> stage qua OP, this Court considers that in this case breach of Section 31(5) of A and C Act plea does not aid the petitioner. There can be no two ways about Hon'ble Supreme Court in Tecco Trichy Engineers case, [Union of

India Vs. Tecco Trichy Engineers and Contractors reported in (2005) 4 SCC 239] and Ark Builders Private Limited case [State of Maharashtra and Others Vs. Ark Builders Private Limited reported in (2011) 4 SCC 616] having held that delivering signed copy of an arbitral award is not a mere procedural formality, but is a matter of immense significance as it becomes a starting point for limitation. In this case, owing to predecessor Hon'ble Judge having summoned records of AT, examining this position and having come to the conclusion that the captioned OP presented on 30.09.2019 is within time, the lone impediment to lessee owing to not being delivered with a signed copy of impugned award stands removed and therefore, this aspect of the matter can be given a quietus dehors delving into whether lessee was reluctant to receive and AT was constrained to lodge in the arbitration centre.

20. It is made clear that this will not serve as a precedent for all and every case of infarct of Section 31(5) of A and C Act, as it is on the peculiar facts and more particularly, the trajectory the matter has taken in pre- <https://www.mhc.tn.gov.in/judis/> numbering stage wherein the lone impediment qua lessee flowing from Section 31(5) of A and C Act infarct stood removed. Hon'ble Predecessor Judge's pre-numbering stage proceedings are dated 24.10.2019 and 04.11.2019.

21. In the light of the narrative thus far, captioned OP fails and the same is dismissed. Consequently, connected application is closed. There shall be no order as to costs.

21.01.2021 Speaking/Non-speaking order Index : Yes / No Internet : Yes / No mk
<https://www.mhc.tn.gov.in/judis/> M.SUNDAR. J mk 21.01.2021 <https://www.mhc.tn.gov.in/judis/>