

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
AT CHENGALPATTU**

Present: Tmt.K.Kayathri, M.A.B.L.
Additional District Judge,
Chengalpattu.

Wednesday, the 27th day of November 2024
I.A.No.2/2022 in O.S.No.160/2022
CNR No: TNCG01-001635-2022

Rattha Holding Company Private Limited,

.... represented by its authorized signatory, having office

at Sholinganallur, Chennai 600 119.

...Petitioner/Applicant/Defendant

..Vs..

IGS Novosoft Technologies Limited,

.... represented by its authorized signatory

having office at

Sadashivanagar, Bengaluru-560 080

...Respondent/Plaintiff

This Petition coming before this court on 6.11.2024 for final hearing in the presence of M/s.B.Ramnath, Arun C.Mohan and Keerthikiran Murali, Counsels for the Petitioner/Defendant and M/s.J.Bhaskaran and R.Venkatesh, Counsels for the Respondent/plaintiff and upon hearing the arguments of both sides and perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

The petition filed Under Section 8 of Arbitration and Conciliation Act, 1996 to refer the disputes between the Applicant and Respondent to Arbitration as per clause 21 of the lease deed dated 01.01.2018.

2. The petition averments in brief as follows:-

The petitioner is the authorized signatory of the Applicant. The above suit has been filed by the Respondent seeking a sum of Rs.1,42,48,849/- for dues allegedly payable to the Applicant. The Respondent and the Applicant entered into a lease agreement dated 01.01.2018 for a period of 36 months from 01.01.2018. The lease agreement cast a duty upon the Respondent to pay stamp duty and register the lease deed. However, the same was not done by the Respondent and the lease deed remains insufficiently stamped and unregistered.

Further, since the Respondent was desirous to terminate the lease agreement as the operations of the Respondent were sold to another entity, the Respondent and the Applicant entered into another agreement titled "lease cancellation and termination agreement" dated 28.01.2020 and the same was not registered by the plaintiff.

The case as stated in the plaint is that the Respondent allegedly deposited a sum of Rs.76,88,136/- as security deposit, Rs.10,67,747/- towards alleged electricity and generator consumption and Rs. 8,03,767/- towards alleged additional current consumption under the lease agreement and the same was not returned back to the Respondent after termination of the lease agreement. Hence the Respondent has filed the suit. In this regard, the Applicant disputes and denies that the Respondent is entitled to relief based on the lease

agreement and the cancellation agreement as admittedly the lease agreement has not been sufficiently stamped nor registered and the cancellation agreement is also not registered. In light of the above, the Respondent is not entitled to any claim in the plaint.

The cancellation agreement is not valid and hence the terms of the said cancellation agreement is also invalid. The lease agreement contains an arbitration clause at clause 21 of the lease agreement. The arbitration agreement, the Applicant is given to understand is severable from the rest of the terms of the lease agreement and therefore is valid regardless of the validity of the terms of the lease agreement. Therefore, the suit is also not maintainable as there exists an alternate dispute resolution clause in the agreement referring disputes to arbitration. Hence the petition.

3. Brief of counter averments filed by Respondent/plaintiff:-

The petition is not maintainable in law and on facts and the same is liable to be dismissed in-limine. It is true that the clause 21 of the lease agreement stipulates for an arbitrate but, by entering into a lease cancellation and termination agreement dated 28/01/2020, the entire lease deed dated 01/01/2018, has been terminated and nullified. Hence, the said clause 21 of the lease agreement dated 01/01/2018 has been waived and the petitioner is not entitled to involve said clause to file this petition. The clause 3 of the lease

cancellation and termination agreement dated 28/01/2020, reads as “With effect from January, 31, 2020, the Lease Deed shall cease to have any effect or force without any surviving provisions, and claims against the Lessee, if any, shall be deemed to have been waived. Such termination shall be without any, additional or further liability or claims by any of the Lessor or the Lessee on the other party, except as set out in this Agreement." Hence, the lease agreement relied on by the petitioner does not exist and admittedly it had ceased to exist with effect from 31/01/2020.

The clause 2 of the lease cancellation and termination agreement reads as “The Lessee had paid a sum of Rs.76,88,136/- towards Interest free Security Deposit, Rs. 10,67,747/-towards EB/DG consumption and a sum of Rs.8,03,767/-towards additional current consumption deposit. The Lessor agrees and undertakes to refund the entire amount of Rs.95,59,650/- to the Lessee in accordance with the terms of the Lease Deed on account of termination of the Lease Deed". Hence, the petitioner agreed and undertook to refund the entire amount of Rs.95,59,650/- since, the petitioner did not refund the said entire amount. Hence, this suit is rightly instituted before this court.

The contention of the petitioner regarding the non registration of the lease agreement and cancellation agreement and also insufficiency of stamp it is unwarranted and uncalled for in this petition. Moreover, the petitioner has filed

appropriate written statement. Hence, this Court may frame an appropriate issues and deliver judgment accordingly.

The clause 6 and 7 of the lease cancellation and termination agreement dated 28/01/2022 reads as “Any disputes arising under this Agreement shall be subject to the laws of India. The Parties hereby agree to the exclusive jurisdiction of the courts at Chennai.” and “the parties shall endeavor to settle any dispute between within 20 (Twenty) days, or such extended period as may be mutually decided by the Parties, from the date of first notice of the dispute, failing which the dispute shall be subject to exclusive jurisdiction of the Courts at Chennai.”

As per clause 6 and 7 of the lease cancellation and termination agreement dated 28/01/2020, stipulates that the disputes shall be subject to the exclusive jurisdiction of the Courts hence, this suit is perfectly maintainable before this Court where the leased property is located and also signed in fact by the parties to the said deed.

There is numerous email communications were exchanged between the petitioner and the respondent regarding the said due payment which payable by petitioner to the respondent and for the cancellation of lease agreement. The petitioner well known about the said clauses 6 and 7 in the lease cancellation and termination agreement dated 28/01/2020 but, the petitioner has suppressed the said facts and filed this petition only to drag on the matter. The petition

itself is an abuse of process of law and is liable to be dismissed.

4. The points for consideration:-

1. Whether the petition is to be allowed or not?

5. POINTS :-

The petitioner/ defendant contended that the suit filed for Recovery of a sum of Rs.1,42,48,849/- for dues payable by petitioner. The present application has been filed under section 8 of the Arbitration and Conciliation Act, 1996 to refer the dispute between the parties to Arbitration.

The petitioner submits that, the Respondent and petitioner entered into a lease agreement dated 1.1.2018 for a period of 36 months. The lease agreement has to be registered by paying stamp duty by the respondent, but the same was not done by the Respondent and the lease deed remains insufficiently stamped and unregistered. The Respondent was intended to terminate the lease agreement as the operations of the Respondent were sold to another entity and thereby the Respondent and petitioner entered into another agreement, lease cancellation and termination agreement dated 28.1.2020 and the other lease agreement was also not registered.

During the course of arguments, the petitioner has submitted by verifying the suit prayer, that the Respondent deposited a sum of Rs.76,88,136/- as Security Deposit, Rs. 10,67,747/- towards Electricity and Generator

Consumption and Rs.8,03,767/- towards additional current consumption under the lease agreement and said amounts was not returned back to the Respondent even after termination of lease agreement.

The petitioner stated that the lease agreement and cancellation of lease agreement are not registered and it is not sufficiently stamped and thus the Respondent is not entitled to any claim. Apart from that, there was a clause in lease agreement at Clause 21 to refer the dispute between the parties to Arbitration and prays to refer the dispute between the petitioner and Respondent to Arbitration as per Clause 21 of the lease deed dated 1.1.2018.

The Respondent contended that the lease agreement dated 1.1.2018 has been terminated and thus, the clause 21 of the lease agreement has been waived and the petitioner is not entitled to invoke the said clause 21. Further, the learned counsel for the Respondent, also referred the 2 and 3 of the lease cancellation and termination agreement dated 28.1.2020.

On perusal of clause 2 and 3 of the lease cancellation and termination agreement shown as hereunder.

A. Mr. Harinder Singh, Mr. Harbinder Singh and Mr. Gurbinder Singh (hereinafter collectively referred to as Land Owners) have executed a lease deed dated 26th September 2005 wherein they have leased all piece and parcel of the land in Survey No.116/6, 117/5A1, 117/7,118/7 (part) and 119/1A admeasuring

32.604 Grounds, and 16 Cents of land in Survey No. 119/1B (part), 120/2 (part) and 121/2 (part) situated at Old Mahabalipuram Road, Okkium, Thuraipakkam Village, Chennai, Tamilnadu within the registration of Neelangarai Sub Registrar in Kanchipuram District (hereinafter referred as the "Land") to Rattha Holding Company Private Limited. The term of the said lease deed is for a term of 19 years till 31 August 2024.

B. The LESSOR has constructed the building by the name 'Campus Tek Towers' in the said Land and is in the possession of the property bearing No. 11, Old Mahabalipuram Road, Okkium, Thoraipakkam Village, Chennai admeasuring 32.8 grounds situated at Okkium, Thoraipakkam Village, Chennai which is specifically described in the Schedule A annexed hereto (hereinafter referred to as "Property").

It is argued that the petitioner agreed and undertook to refund the entire amount of Rs.95,59,650/-, since the petitioner did not refund the said amount, and thereby the Respondent filed the suit and the suit is maintainable and prays to dismiss the petition.

Upon hearing the rival submissions and perusal of lease agreement and the lease termination and cancellation agreement, it disclosed that lease agreement dated 1.1.2018 was terminated through lease termination and cancellation agreement dated 28.1.2020 and thus, there is no any specific

agreements in writing between the parties to invoke the Arbitration Clause. As per Sec.7 of the Arbitration Act, there should be an agreement between the parties in writing. In light of these provisions of law, it is seen that the present suit cannot be referred to Arbitration in the absence of any lease agreement exists between the parties.

Thus, in the light of Sec.7 of Arbitration Act, this court could not see any written agreement between both the parties and in such circumstances, the parties cannot be referred to Arbitration. Therefore, this petition is liable to be dismissed.

Finally, this petition is dismissed. No cost.

Dictated by me to the Stenographer and directly typed by her in the Desktop, corrected and pronounced by me in open Court this **the 27th day of November.2024.**

sd/-K.Kayathri
Additional District & Sessions Judge
Chengalpattu.

Exhibits and Witnesses on either side:- Nil

sd/-K.Kayathri
Additional District & Sessions Judge
Chengalpattu.

Draft/Fair Order
I. A. No.1/2022 in
O.S.No.160/2022
Dated : 27.11.2024
ADJ/CPT

**I. A. No.1/2022 in
O.S.No.160/2022**

Dated:27.11.2024

Order Passed

**Finally, this petition
is dismissed. No cost.**

ADJ/CPT

