

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

WRIT PETITION NO.1305 OF 2022 (GM-CPC)

BETWEEN

GOKALDAS IMAGES PRIVATE LIMITED
NO.7 AND 12, INDUSTRIAL SUBURB, 2ND STAGE
YESHWANTHPURA, TUMKUR ROAD
BENGALURU-560 022
REPRESENTED BY ITS MANAGING DIRECTOR
MR.SUMIR J HINDUJA

...PETITIONER

(BY SRI DHANANJAY V JOSHI, SENIOR COUNSEL FOR
SRI VACHAN H V, ADVOCATE)

AND

1. ARIES AGRO - VET ASSOCIATES (PVT) LIMITED
HAVING ITS REGISTERED OFFICE AT NO.55,
NMG PLAZA, 1ST MAIN ROAD,
CHAMARAJPET
BENGALURU-560 018

RERESCTMED BY ITS DIRECTOR
MR.D.H.NANATHSA

2. ENGLISH BLAZER
A UNIT/SISTER CONCERN OF GOKALDAS
IMAGES PRIVATE LIMITED
NO.67, KADIRENAHALLI MAIN ROAD
SUBRAMANYAPURA ROAD, UTTARAHALLI HOBLI

BENGALURU-560 061
REPRESENTED BY ITS MANAGING
DIRECTOR
MR. SUMIT J HINDUJA.

....RESPONDENTS

(BY SMT. BHAVANA G K, ADVOCATE FOR R1;
NOTICE TO R2 DISPENSED WITH VIDE ORDER DATED
24.02.2022)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 08TH AUGUST, 2018 PASSED BY THE HON'BLE IV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT MAYOHALL UNIT, BENGALURU (CCH-21), BENGALURU IN ORIGINAL SUIT NO.25552 OF 2017 VIDE ANNEXURE-A AND REFER THE PARTIES TO THE ARBITRATION IN TERMS OF THE CLAUSE 12 OF THE LEASE DEED DATED 13TH MAY, 2011 AND PASS SUCH OTHER ORDERS/OR DIRECTIONS AS THIS HON'BLE COURT MAY DEEM FIT AND PROPER IN THE VACTS AND CIRCUMSTANCES OF THE CASE.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This Writ Petition is filed by the defendant No.1 in Original Suit No.25552 of 2017 on the file of the IV Additional City Civil and Sessions Judge at Mayohall Unit, Bengaluru, now pending consideration before the LXXXIV Additional City Civil and Sessions Judge, Commercial Court, Bengaluru on IA.I of 2017.

2. The relevant facts for adjudication of this Writ Petition are that, respondent No.1, claims to be owner of the property in question and the respondent No.1 has entered into a lease deed dated 13th May, 2011 with the petitioner as per Annexure-B. The respondent No.1 has filed Original Suit No.25552 of 2017 before the trial Court seeking relief of ejectment, arrears of rent, damages and consequential injunction to restrain the petitioner from subletting the suit schedule property. In the meanwhile, the suit was transferred to the Commercial court as Com.OS No.25552 of 2017. The petitioner, entered appearance in the suit and filed application in IA.1 of 2017 under Section 8 of Arbitration and Conciliation Act, 1996 seeking referring the parties to the arbitration in terms of the clause 12 of the lease deed dated 13th May, 2011. The respondent No.1 herein filed objection to the said application. The trial Court, after considering the material on record, by impugned order dated 08th August, 2018, rejected the application for referring the parties to Arbitration proceedings. Feeling aggrieved by the same, the petitioner has presented this petition.

3. Heard Sri Dhananjaya Joshi, learned Senior Counsel on behalf of Sri Vachan, learned counsel for the petitioner and Smt. G.K. Bhavana, learned counsel appearing for the respondent No.1.

4. Sri Dhajanaya Joshi, learned Senior counsel for the petitioner argued that the trial Court dismissed the application following the law laid down by the Hon'ble Apex Court in the case of HIMANGI ENTERPRISES v. AMALJIT SINGH AHULVALIA made in Civil Appeal No.16850 of 2017 decided on 12th October, 2017, wherein the Hon'ble Supreme Court has held that the issue relating to the lease is not arbitral in nature. However, learned senior counsel invited the attention of the Court to the judgment of the Hon'ble Apex Court in the case of VIDYA DROLIA v. DURGA TRADING CORPORATION reported in (2019)20 SCC 406 and contended that the Hon'ble Supreme Court, held that judgment in HIMANGI ENTERPRISES (supra) requires re-look by a Bench of three Hon'ble Judges of Hon'ble Supreme Court and therefore contended that the impugned

order passed following the judgment in HIMANGI (supra) is incorrect and requires interference in this Writ Petition.

5. On the other hand, Smt. G.K. Bhavana, learned counsel appearing for the respondent submitted that the Writ Petition is devoid of merits on the ground that the Writ Petition has been filed at the belated stage as the impugned order is passed on 08th August, 2018 and the present Writ Petition is filed in the year 2022 and therefore, there is delay of three years which disentitles the petitioner to claim relief in the Writ Petition. She also submitted that the dispute is at the fag end of the proceedings before the Commercial Court and therefore, taking into consideration the relief sought for by the plaintiff/respondent No1. seeking relief of ejection and arrears of rent, she sought to justify the impugned order passed by the trial Court.

6. Having heard the learned Counsel for the parties I have carefully considered the impugned order passed by the trial Court. The Trial Court, by referring to the judgment passed by the Hon'ble Supreme Court in the case of HIMANGI

ENTERPRISES (supra) has arrived at the conclusion that the lis between the parties is relating to eviction as well as arrears of rent and therefore, same are non-arbitrable in nature and accordingly, dismissed IA.1 of 2017 filed by the defendant/petitioner herein. In the light of the conclusion arrived at the by the trial Court, based on the judgment of the Apex Court in HIMANGI ENTEPRISES (supra) I have considered the later judgment of the Apex Court in the case of VIDYA DROLIA (supra) wherein at paragraph 12 of the judgment it is observed thus:

"12. While appreciating that a lease is a transfer of an interest in property, and therefore, a conveyance, in law, there is nothing in the Transfer of Property Act to show that a dispute as to determination of a lease arising under Section 111 cannot be decided by arbitration. However, what was argued was that Sections 114 and 114A and, which provide for statutory reliefs against forfeiture for non- payment of rent and for breach of an express condition, would indicate that the statute itself is based on a public policy in favour of tenants as a class, which can be decided by the courts only."

7. Further, at paragraphs 26 and 34 of the judgment, it is observed thus:

"26. Equally, merely because a discretion had to be exercised by the court on whether or not to grant specific performance, would not militate against specific performance being granted [see paragraph 44, in particular, of Booz Allen (supra)]. It is clear, therefore, that the judgment in Himangni Enterprises (supra) will require a relook by a Bench of three Hon'ble Judges of this Court.

27 to 33 xxx xxx xxx

34. In this view of the matter, this case is referred to a Bench of three Hon'ble Judges."

8. In the case of VIDYA DROLIA, the Hon'ble Supreme Court, taking into consideration the law declared by the Hon'ble Apex Court in the case of HIMANGI ENTERPRISES (supra), arrived at the conclusion that the judgment rendered in HIMANGI ENTERPRISES (supra) requires a re-look by the Larger Bench by the Hon'ble Apex Court. Thereafter, the Three Judge Bench of the Hon'ble Apex Court in the case of VIDYA DROLIA v.

DURGA TRADING CORPORATION reported (2021)2 SCC 1 at paragraphs 79 and 80 observed thus:

*"79. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not action *in rem* but pertain to subordinate rights in *personam* that arise from rights in *rem*. Such actions normally would not affect third-party rights or have *erga omnes* effect or require centralised adjudication. An award passed deciding landlord-tenant disputes can be executed and to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. The Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the Arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.*

80. In view of the aforesaid, we overrule the ratio laid down in HIMANGI ENTERPRISES and hold that the landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be

*adjudicated and enforced by the specified court/forum,
and not through arbitration."*

9. In that view of the matter, I am of the view that the impugned order passed by the trial Court dated 08th August, 2018 is liable to be set aside, accordingly set aside, resultantly, Writ petition is allowed.

**Sd/-
JUDGE**

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