

In the High Court of Judicature at Madras

Dated : 04.11.2016

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.495 of 2016

M/s.Trend Fashions (India) Private Limited,
rep. by its Director Mrs.Jasseendha Joseph,
having their registereed office at
4E, Parkland Apartments,
No.8, Nathan Street, Harrington Road,
Chetpet, Chennai-600 031.

.. Petitioner

-VS-

M/s.Murugan Yakesh Car Care Service
Centre Private Limited,
rep. by its Director Mrs.Indira,
having their registered office at
No.24, Queen Victoria Street,
Poonamallee, Chennai-600 056

and business office at

M/s.Murugan Yakesh Car Care Service
Centre Private Limited,
No.3/280, Poonamallee High Road,
Kumanchavaadi, Chennai-600 056.

.. Respondent

Petition filed under Section 11 (6) (a) & (c) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator on behalf of the respondent to resolve all the disputes arising out of the Lease Deed.

For Petitioner : M/s.K.Suresh Babu

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ORDER

The petitioner, as owner executed the lease deed dated 01.06.2014 in favour of the respondent in respect of the land measuring 4000 square feet of the factory building with asbestos roofing material together with 600 square feet of RCC building comprising the ground floor, 6000 square feet of concreted open area for car parking together with store room measuring 800 square feet, separate water tank, car wash area, amenities and fixtures including 120 feet of separate pipe connection and electricity service connection (Power load 45 KW) for a monthly lease amount of Rs.2,10,000/- for a period of eleven months.

2. It is the allegation of the petitioner that the respondent has failed to make the payments in terms of the lease deed and even acknowledged vide letter dated 08.11.2014 for their failure to do so and requested that they would wind up the business. But they continued to be in occupation.

3. The petitioner, thus, addressed a letter through the counsel dated 05.06.2015 making demand of the dues of Rs.5,20,000/- due till that date, followed by a notice dated 04.03.2016 seeking to invoke the arbitration clause in the agreement, which reads as under:-

"36. In case of any dispute or difference arising between the Parties hereto in any of the matters under this Lease Agreement or interpretation or implementation of any of the terms and conditions herein, the same shall be resolved through arbitration under the Arbitration and Conciliation Act, 1996. Any such arbitration shall be conducted by a three member arbitral tribunal with each of the parties appointing their respective arbitrators and the two arbitrators so appointed shall appoint the presiding arbitrator. The venue of the arbitration shall be at Chennai. The parties shall pay the cost of the arbitration as may be directed by the Arbitrators in their award."

4. The jurisdictional clause is as under:-

"37. The Civil Courts at Chennai alone shall have jurisdiction in all matters arising out of and touching and/or concerning this Lease Deed or any other agreements that may be entered into between the parties herein pertaining to the "Demised Premises."

The present petition thus has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.

5. On notice being issued, the learned counsel has entered appearance for the respondent. But none was present on 19.08.2016, when the matter was listed. Despite the same, opportunity was granted to file the reply within two weeks.

6. No reply was filed on the next date on 30.09.2016. Mrs.Indira, Director of the respondent Company put in appearance and stated that she had not received the complete set of papers, which were supplied in the Court on that date and three weeks' further time was granted to file the reply. No reply has been filed. None is present for the respondent, despite the matter being called once and passed over. It is 4.15 P.M.

7. In view of the aforesaid facts and circumstances, the allegation in the petition stands not rebutted in respect of the existence of the agreement and the arbitration clause, disputes having arisen and the jurisdiction being of this Court.

8. The learned counsel for the petitioner suggests that in order to curtail the costs, instead of there being a panel of three Arbitrators, the sole Arbitration would suffice.

9. I, thus, appoint Mr.J.Krishnamurthy, a retired District Judge (Mobile 9442092363), B-2/D, 1st Floor, Nu Techkrishna, Old No.15, New No.37, Soundararajan Street, T.Nagar, Chennai-17, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes *inter se* the parties. As requested, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

10. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)
04.11.2016

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Note: Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

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