

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

O.P.No.118 of 2013

M/s.Photon Infotech Pvt. Ltd.,
rep. by its Chief Financial Officer,
S.R.Ram Charan,
DLF, IT Park, Block 6, Level 7,
1/24, Mount Poonamallee High Road,
Manapakkam, Chennai-600 089. ... Petitioner

Vs

1. M/s.Mathi Leathers Private Ltd,
rep. by its Chairman & Managing Director
M.S.Vadivelu,
Old No.18, New No.6, Kumarappa Street,
Periamet, Chennai-600 003.
2.D.Saravanan, Presiding Arbitrator
3,T.T.Harikrishnan, Co-Arbitrator
4.K.Moorthy, Co-Arbitrator,
No.235, 5th Floor, Angappa Naicken Street,
Chennai-600 001 ... Respondents

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This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act,1996, to set aside the Arbitral Award dated 04.08.2012 passed in Arbitration Case No.1 of 2012 by the second respondent tribunal and directing the petitioner to pay the first

respondent a sum of Rs.1,65,000/- towards rent per month from 16.12.2010 till vacating and handing over of the key of the lease hold premises.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.S.Namasivayam for R-1

ORDER

The petitioner and the first respondent entered into a lease agreement on 07.12.2010. The lease agreement was for a period of 11 months. As per Clause 2(ii) of the agreement, the lease shall automatically come to an end on 12.11.2011. The petitioner has also paid security deposit of Rs.10,00,000/-. Under Clause-11, the lessee, namely, the petitioner shall duly deliver back the peaceful vacant possession of the schedule mentioned premises to the first respondent. Clause-17 speaks about the Arbitration agreement.

2. There appears to be some dispute with respect to the date of handing over of the possession. Thus, there is no dispute that the parties have agreed to hand over the possession. The other issue is with respect to the compensation/damages along with rent payable beyond the period mentioned in the lease agreement. There were communication between the parties. Thereafter, the first respondent invoked the arbitration clause. The Arbitration Tribunal consists of

three learned Arbitrators. Several issues have been framed after exchange of pleading by the Tribunal. Finally, the Tribunal was pleased to pass the following order:-

"9. Decision;

In the light of the above, this Tribunal passes an Arbitral Award that;

a) the respondent shall deliver the key and peaceful vacant possession of the leasehold premises to the claimant forthwith;

b) the respondent shall pay a sum of Rs.1,65,000/- towards rent per month from 16.12.2011 till the date of vacating and handing over of key and vacant possession of the leasehold premises; and

c) the claimant shall be liable to pay a sum of Rs.5,76,457/- to the respondent forthwith subject to deductions or adjustment towards arrears of monthly rent from 16.12.2011 till the date of delivery vacant possession of the tenancy premises.

In non-compliance thereof, it is open to the parties concerned to enforce this arbitral award as contemplated under Section 36 of the Arbitration and Conciliation Act, 1996 as against the defaulting party."

3. After the Award was passed, an application was filed under Section 9 of the Arbitration and Conciliation Act by the petitioner. Pursuant to the report filed by the learned Advocate Commissioner, the premises in question was handed over to the first respondent.

4. The learned counsel for the petitioner would submit that the maintainability of the dispute before the Tribunal itself is in question. By the Government Order passed in G.O.Ms.No.124, Housing and Urban Development dated 31.05.2012, the Tamil Nadu Lease and Rent Control Act has been made applicable to the property in dispute. The Tribunal has not taken into consideration the fact that the petitioner is always ready and willing to hand over the vacant possession. The dispute came at the instance of the first respondent with respect to the period. There is no clause in the agreement for damages/compensation. That is the reason, the counter claim was rejected. There is no question of handing over vacant possession which jurisdiction will lie only with the learned Rent Controller under the Rent Control Act.

5. The learned counsel for the first respondent would submit that the Award is very fair. It is not as if, all the claims were granted. Even the interest portion was not granted. It is the petitioner who

submitted before the Tribunal that the notification to include the property under the Rent Control Act has not come into force. No such plea has also been taken before this Court except during arguments. A factual finding has been given with respect to the damages caused. Hence, no interference is required, especially when the possession was handed over pursuant to the report filed by the learned Advocate Commissioner who found that the materials were kept inside the premises belonging to the petitioner, though, on an application filed by it.

6. This Court is conscious of the fact that the disputed question of fact cannot be gone into in the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The question of jurisdiction was not raised by any other parties, but only by the Tribunal on its own motion. It is the petitioner who took the plea that the property has not been brought under the purview of Tamil Nadu Lease and Rent Control Act. The petitioner has also not raised such plea during the pleadings before this Court. This Court is concerned with the validity of the Award passed by the Tribunal. Therefore, it is not open to the petitioner to contend to the contrary during the arguments. Even otherwise, if one goes by the case of the petitioner, it is not concerned with the raised ground under the Lease and Rent

Control Act. It is the specific case of the petitioner that it was always ready and willing to handover the possession after issuance of notice. It is further to be noted that at least at the time of entering into an agreement, the Tamil Nadu Lease and Rent Control Act was not in force. Perhaps, there must have been possession even at the time of filing the claim petition, preceded by invoking of the Arbitration Clause. Hence, the contention raised in this regard stands rejected.

7. Coming to the contention raised on merit, the Tribunal has gone at length in considering the pleadings of the parties. It took into consideration clause-11 of the agreement vis-a-vis clause 3(i). Handing over the possession coupled with entitlement to receive the security deposit go hand in hand with each other. When two interpretations are possible, one adopted by the Tribunal, in the absence of any perversity requires to be adopted by the Court in exercise of its power under Section 34 of the Arbitration and Conciliation Act.

8. Clause 17 which speaks about the existence of the arbitration clause gives wider power to the Tribunal. Such power will not restrict the Tribunal from going to the issue of compensation. The agreement did not restrict the power of the Tribunal from going

into the issue of compensation. The Tribunal has given a finding that the petitioner did not question the issue raised by the first respondent for removal of two bath room taps at the appropriate time. In fact the petitioner did acknowledge earlier by signing the document that there are existence of four taps. These are all on the realms of factual adjudication. The rejection of the counter claim is one thing as against the claim of the first respondent. The factual discussion made would lead to the conclusion that the petitioner did not factually handover the possession. Perhaps, that is the reason why it had filed an application at the later point of time. The position was recorded by the Court, all the applications filed after the Award. The Advocate Commissioner's report also indicated the belongings of the petitioner inside the premises. The possession was handed over to the first respondent on 24.09.2012 as per the report of the Advocate Commissioner.

9. Thus, this Court does not find any reason to interfere with the Award passed by the Arbitration Tribunal. Accordingly, the Original Petition is dismissed. No costs.

21.11.2017

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M.M.SUNDRESH,J

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