

O.A.No.752 of 2016**T.S.SIVAGNANAM, J**

Heard Mr.V.Kuberan, learned counsel for the Applicants and Mr.Habeeb Raja, learned counsel appearing for the respondents.

2.In this Application, the applicants have sought for an order of interim injunction to restrain the respondent and any one acting under her or claiming under her from interfering with the possession of the property being a shop in a shopping mall at Velachery, Chennai-42. The applicants have filed this Application under Section 9 of the Arbitration and Conciliation Act, 1996, (Act).

3. The case of the applicants is that they are owners of the several portions of the commercial mall known as “Grand Mall” and the lands originally belonged to the applicants. They entered into a development agreement and the developer constructed shops and one of the shops bearing shop No.2/A, fell to the share of the landowners and was taken on lease by the respondent vide lease agreement dated 30.06.2013. The lease agreement contained various conditions, apart from fixing the monthly rent payable etc. The parties also agreed that any dispute between them to be resolved by the process of Arbitration and the venue of Arbitration shall be of their choice.

4. The Applicants' contention is that after taking possession of the shops, the respondent did not honour any of her commitments, did not make the deposits as undertaken, did not pay the rent, and in spite of the applicants having extended full cooperation, the respondent did not even pay one month rent after entering into the premises. On account of the conduct of the respondent, the applicants sent an e-mail to the respondent on 24.06.2014, informing that the applicant had shut down the operation and closed the shops taken on lease. However, it is submitted that even if such a stand is taken, it will not exonerate the respondent from the default in payment of rent due and payable as per the terms of the agreement. As of December 2014, the applicants' claim is that a sum of Rs.9,12,866/- is due and payable towards rent and other charges. Therefore, a notice was issued on 17.12.2014, terminating the lease agreement and exercising the applicants' right of re-entering their property in February 2015 took possession of the possession of the shop.

5. The applicants' contention is that under the guise of holding the keys to the shops, the respondent is attempting to re-enter the shop. In fact a Civil Suit has been filed by the respondent in O.S.No.3892 of 2016 on the file of the II Assistant Judge, City Civil Court for an order of permanent injunction and the Suit is pending. However, no interim injunction was granted. The applicants have filed an application under Section 8 of the Act to stop further proceedings in the Suit. The respondent also approached the

learned Rent Controller, 15th Small Causes Court, Chennai in R.C.O.P.NO.1033 of 2016 for restoration of amenity, alleging that it was disconnected illegally. A stand was taken by the respondent, as if she is in possession of the property and the landlord disconnected the amenities. However, since there were certain unpleasant situations created by the respondent, the applicants have filed a police complaint. With these facts, the applicants seek for order of interim injunction.

6. The learned counsel appearing for the respondent submitted that the action of the landlord is highly arbitrary and unreasonable and though the lease agreement provided for lock in period of three years, the landlord is alleged to have entered possession of the property and when proceedings are pending before the Civil Court and before the learned Rent Controller, this application should not be entertained and it is not maintainable. Further, the learned counsel referred to the various averments set out in the plaint filed in support of O.S.No.3892 of 2016 and other collateral proceedings.

7. On the last hearing date i.e., on 02.01.2017, the Court, after elaborately hearing the learned counsels for the parties, passed the following order:-

Heard Mr.V.Kuberan, learned counsel for the applicants and Mr.Habeeb Raja, learned counsel appearing for M/s.Arulselvam Associates, learned counsel on record for the respondent, for a considerable length of time.

2. The respondent already approached the Civil Court and the Rent Controller and also filed a police complaint pertaining to the same issue. It appears that as of now, the respondent has not been able to obtain any interim order from any of the three forums, which she has approached.

3. The specific case of the applicants is that they terminated the agreement between the parties and had taken over possession and a panchnama has been recorded. They have also questioned the jurisdiction of the Civil Court in entertaining the suit as well as the rent control proceedings. The applicant also issued a notice dated 26.08.2016 invoking arbitration clause in the agreement dated 13.06.2013, with a rider that they are agreeable to go before the sole Arbitrator, if the respondent agrees.

4. The respondent shall produce a document on the next hearing date, to show that she is in lawful possession of the premises in question. List on 19.01.2017.

8. In terms of the above order, the respondent was directed to produced a document to show that she is in lawful possession of the premises in question. Today when the case is taken up for hearing, there is no document produced by the respondent, but the learned counsel for the respondent would submit that admission is the best proof and in this regard, the learned counsel referred to the averments in the affidavit filed in support of his application, in particular paragraphs 3(a), 3(c)(viii) and submitted that it is the admission of the petitioners that the respondent is possession of the premises.

9. In my considered view the said contention is absolutely devoid of merits, because the said paragraphs deal with the possession prior to termination of the lease by notice dated 17.12.2014. Paragraph 3, in fact sets out the factual details that unless and until the respondent complies with the terms and conditions of the lease, the question of falling back on the lock in period or for that matter the conditions would not arise. Therefore, this Court is fully satisfied that the respondent has not been able to produce

any document to show that she is in lawful possession and enjoyment of the property as on date.

10. The learned counsel for the applicant sought to rely upon certain decisions of the Hon'ble Supreme Court on the effect of an application under Section 8 of the Act, these issues have to be canvassed by the petitioner while contesting the application filed by the landlord in O.S.No.3892 of 2016.

11. For all the above reasons, the applicants have made out a case for grant of interim order. Accordingly, there will be an order of interim injunction as prayed for till the disposal of the Arbitration proceedings.

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19.01.2017

T.S.SIVAGNANAM,J.
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