

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.1673 OF 2017****IN****ARBITRATION PETITION NO.1819 OF 2015**

Carzonrent (India) Pvt. Ltd.Applicant/Petitioner

vs

Pallazzio Hotel And Leisure Ltd. ...Respondent

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Mr. Rohaan Cama, a/w. Mr. Gaurav Jangle and Mr. Digant Bhatt, i/b.
I.V. Merchant & Co., for the Applicant.

Mr. Sharan Jagtiani, a/w. Ms. Kirtida Chandarana and Ms. Manasi Kalvit,
i/b. Mahernosh Humranwala, for the Respondent.

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CORAM : S.C. GUPTE, J.**DATED: 18 DECEMBER, 2018****P.C.:**

. Heard learned Counsel for the parties. This notice of motion is taken out in a disposed of arbitration petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("Act"). The motion seeks a clarification, or, in the alternative, necessary directions in respect of an order passed by this Court on the earlier Section 9 application. The dispute between the parties pertains to a car hire agreement executed between them. The subject matter of controversy concerns both arrears of rent payable by the Respondent in respect of cars hired by it from the Petitioner under this agreement, as also the residual value of the six cars hired under the agreement. The Respondent is claimed to have terminated the agreement of hire and yet not returned possession of the hired cars to the Petitioner. In the premises, an application was first

made before this Court under Section 9 of the Act for interim reliefs pending a reference. The application was disposed of by the order of 28 January 2016 and the disputes between the parties were referred to arbitration. The order of 28 January 2016 *inter alia* requires the Respondent to deposit a sum of Rs.1,74,40,000/- in the office of the Prothonotary & Senior Master, presumably, towards the residual value of the six cars and also directs the Respondent to deposit the monthly rent of the cars in the office of the Prothonotary & Senior Master as per their agreement. The first payment of rent was directed to be made on 10 February 2016 and further rent for each of the subsequent months on or before 10th of each month. Directions were given to the Prothonotary to invest the amount deposited. It is not in dispute that the Respondent has been depositing monthly rents prospectively on and from 10 February 2016 in due compliance with the order of 28 January 2016. What is claimed by the Petitioner/Applicant is that the first payment to be made on or before 10 February 2016 not only included prospective rent after the date of the order, i.e. after 28 January 2016, but also arrears of rent due and payable for the period between 8 December 2015 and 31 January 2016. It is these rents, which the Petitioner now seeks to recover, and for which a clarification, or, in the alternative, a direction is sought from this Court.

2. It is by no means apparent from the order of 28 January 2016 that what was agreed to be paid thereunder was not the prospective rent but even the arrears of rent referred to above. What is more important is that since there was no clarity on the issue, the Petitioner even moved an application by way of a praecipe before the

same learned Judge, who had passed the order, seeking an appropriate clarification/direction. No order was passed by the learned Judge on this application. Learned Counsel for the Petitioner submits that the praecipe of the Petitioner's Advocate did not seek an order for deposit of arrears but for fixing the time for deposit of arrears of rent. That is not different from saying that no provision had been made for deposit of arrears. At any rate, this application, by itself, undermines the Petitioner's case that the direction to make the first payment on or before 10 February 2016 included direction to pay the arrears, since it was the Applicant/Petitioner's own avowed case in the praecipe that no such time was fixed for payment of arrears. Be that as it may, if there was no such clarity, an appropriate clarification in that behalf had to be sought from the Court during the pendency of the reference and not after the reference is over. Alternatively, since the matter was referred to the arbitral tribunal, it was perfectly open to the Petitioner to apply for these arrears before the arbitrator himself. It appears that submissions were in fact made on the arrears before the learned arbitrator. The award of the learned arbitrator records that the Respondent's counter-claim was for arrears of rent as of 8 June 2016. The learned arbitrator notes that the counter-claim was unclear about the period for which unpaid rentals with interest were sought, whilst the reply to the counter-claim was categorical in this behalf. The learned arbitrator notes the Respondent's Advocate's statement in this behalf that the claim for payment of arrears of car rentals was for November 2015 and part of December 2015 (until 7 December 2015). The arbitrator further notes that this position was not disputed by learned Counsel for the Respondent. Learned Counsel for the Petitioner informs the Court that the counter-claim was for rent

due for the period of November and December 2015 and January 2016 and also for interest thereon. If it is the Petitioner's own case that the counter-claim was *inter alia* for the period of November 2015, December 2015 and January 2016, together with interest, and if that counter-claim was allowed on the Respondent's statement, which was not disputed by the Petitioner herein, only for the car rentals for November 2015 and part of December 2015 (i.e. upto 7 December 2015), the obvious conclusion is that the counter-claim for the period from 8 December 2015 till 31 December 2015 and for the month of January 2016 was refused by the learned arbitrator after stating his reasons for such refusal.

3. In sum, there is no clear order for payment of arrears of rent for the period from 8 December 2015 to 31 January 2016 in the original order passed by this Court under Section 9, the Court even refusing to make any further clarification or issue any further direction on the point; on the other hand, as far as the arbitral tribunal is concerned, as against the period from 1 November 2015 to 31 January 2016, the arbitrator, deliberately and after discussing reasons, granted arrears only for the month of November 2015 and seven days of December 2015.

4. On these facts, there is no case for now issuing any clarification or direction so as to include the arrears of rent for the period from 8 December 2015 till 31 January 2016 as part of the direction issued in the original order. The notice of motion is accordingly dismissed.

(S.C. GUPTE, J.)