

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF FEBRUARY 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A. No.4375 of 2018

In the matter of Arbitration &
Conciliation Act, 1996

And

In the matter of the Agreement
dated 21.09.2007 entered into
between

Indus Towers Ltd.,
rep. by its Authorised Signatory,
Mr.D.Harikrishnan,
5, ESPEE IT Park, 5th Floor,
Jawaharlal Nehru Road,
Ekkattuthangal, Chennai-97.

... Applicant

-Versus-

S.Vijayakumar,
S/o.Mr.Somasundaram,
Plot No.214, Ganesan Street,
Bhuvaneswari Nagar, Velacherry,
Chennai-600 042.

... Respondent

Application praying that this Hon'ble Court be pleased
to appoint an Advocate Commissioner to supervise the
dismantling of the mobile tower erected at the property
morefully setout in the schedule A hereunder and remove the
materials setout in the Schedule B hereunder, pending
resolution of disputes through arbitration.

This application coming on this day before this court
for hearing, the Court made the following order:-

The prayer sought for herein is to appoint an Advocate

<https://hcservices.ecourts.gov.in/hcservices/>

Commissioner to supervise the dismantling of the mobile
tower erected at the property morefully set out in the

Schedule A hereunder and remove the materials set out in Schedule B as shown in the typed set pending resolution of disputes through arbitration.

2. Pursuant to the lease agreement, dated 21.09.2007 between the parties, the cellphone tower was erected at the building of the respondent by the applicant sometime in September 2007 and the said lease term was 6 years, which expired on September 2013, therefore by renewal agreement, dated 29.08.2013, the said agreement was further renewed for a period of 10 years. Among various terms of agreement, the relevant portion of agreement pertaining to this application is that, the monthly rent for the lease was fixed at Rs.42,116/- and yet another clause, enable the lessor to claim 15% hike after expiry of 3 years towards the monthly rent. Yet another important clause of agreement is Clause 8 pertaining to terminate the lease unilaterally by giving three months notice.

3. In that circumstances, on 08.05.2017, the agreement was terminated by the applicant and it has been communicated to the respondent.

4. Therefore even though it was claimed that, only certain items had been removed and major machineries erected therein still had been there, it is the claim of the respondent that, major machineries have been removed, without the concurrence of the respondent, but still there are some machineries. As, according to the respondent,

there has been rental arrears and part of the building has been damaged due to the fallen down of the machineries, the same has to be rectified only by the applicant. Only in that circumstances, this application has been filed.

5. Heard Ms.S.P.Arthi, learned counsel appearing for the applicant and Mr.S.Namasivayam, learned counsel appearing for the respondent.

6. According to the learned counsel appearing for the applicant, the lease was terminated on 08.05.2017. Till December 2017, even according to the averment made by the respondent in the counter affidavit, the rent up to date of the termination of lease had been paid. That apart, a sum of Rs.1,30,000/- being the rental advance is lying with the respondent, therefore the same can be adjusted, apart from that, whatever damages caused to the building according to the respondent can be reimbursed and the remaining amount can be returned back to the applicant. Further this submission of the learned counsel appearing for the applicant has been stoutly denied by the learned counsel appearing for the respondent, who in fact submits that rent has been fixed at Rs.42,116/-, which is only from 2013 September and therefore from 2016 September up to 2016 December, for the three months period, the rent should have been enhanced by further 15%. Therefore the monthly rent ought to have been paid as Rs.48,000/-, which has not been

paid. Therefore this comes around Rs.1,44,000/-. That apart, the learned counsel appearing for the respondent submits that, due to the building damages, at least a sum of Rs.1,00,000/- has to be paid, apart from that from December 2016 onwards till date the building could not be used for any other purpose like the one as has been leased out to this applicant, since the machineries of the applicant still lying in the building of the respondent, therefore for the said period from 2016 December till date the damages to be quantified shall also be paid by the applicant.

7. I have considered the said submission made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

8. Since both the parties have not so far appointed any Arbitrator to resolve the issue amicably, by invoking the clause of arbitration in the arbitration agreement, only as an interim measure by invoking Section 9 of the Arbitration Act, this application has been filed.

9. On 08.05.2017 by clear terms, the lease has been terminated unilaterally by the applicant. According to Clause 8 of the agreement, lease can be terminated by both parties by giving three months notice in writing, but here there is no three months notice given. Therefore this Court

feels that, the respondent can be entitled to get three months rental due.

10. Apart from that, even though it was claimed by the respondent that, rent was paid only up to September 2016, the learned counsel appearing for the applicant submits that, three months in advance rent undoubtedly have been paid, therefore as per the counter, rent up to December 2016 has been paid. Therefore, according to the learned counsel appearing for the applicant, there is no rental arrears and this aspect cannot be resolved by this Court and resolved only by the Arbitrator in this regard.

11. In so far as damages of Rs.1 lakh claimed by the respondent is concerned, the learned counsel appearing for the applicant fairly submits that, unless that is quantified by the certified Engineer and to be resolved ultimately by the Arbitrator, the ransom amount of Rs.1 lakh cannot be claimed by the respondent. I find there is some force in this argument, however towards security, the applicant can come forward to deposit a reasonable sum at this Court towards the damages, which would be disbursed to the respondent ultimately if the Arbitrator comes to the conclusion that, there had been damages in the building of the respondent which make the respondent entitled to claim

such damages.

12. In so far as the claim for damages for the condition of unutilization of the building for the past 2 years and more because of the applicant's goods are lying therein, this Court feels that, this issue could not be resolved by this Court in this application and it is open to the respondent to agitate this issue before the Arbitrator.

13. In the result, the following order is passed in this application:

"(1) That the rental advance of Rs.1,30,000/- lying with the respondent shall be adjusted towards the rent for three months in lieu of the three months notice, as per Clause 8 of the agreement. The remaining amount if any payable by the applicant, that shall be decided by the Arbitrator.

(2) Apart from the above adjustment, the applicant shall deposit a sum of Rs.1,00,000/- (Rupee one lakh only) to the credit of this application before this Court and the same shall be withdrawn by the eligible party as per the decision to be taken by the Arbitrator. Till such time, the amount shall be lying in this application's account at this Court.

(3) With the above two conditions, the machineries whatever available which are lying at the building or premises of the respondent, shall be permitted to be removed by the applicant and in this regard, the date of sending the technicians and other workers to remove such machineries shall be intimated in

advance to the respondent in writing and on receipt of the same, the convenient date shall be intimated by the respondent in three days on receipt of such communication and on receipt of such reply from the respondent on the date to be mentioned by the respondent, the applicant shall send their staff and technicians to remove such machineries.

4. The aforesaid exercise in a whole shall be completed within a period of three weeks from the date of receipt of a copy of this order."

With these directions, this application is ordered accordingly.

Sd./-R.S.K.J

12/02/2019

//Certified to be a true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 24/04/2019

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