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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 1st August, 2018

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O.M.P.(COMM.) 532/2016

EXPRESS NETWEB SOLUTIONS PRIVATE LTD.

.....Petitioner

Through

Mr.Pawan Upadhyay,
Mr.Rajesh Chhetri, Mr.Rajeev
& Ms.Meenakshi Rawat, Advs

versus

IVK MOBILE PVT.LTD.

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 29.08.2014 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Lease Deed dated 11.08.2011.

2. By way of the Lease Deed dated 11.08.2011 the petitioner had given on rent the Unit No. 506 on the First Floor, Tower A of the

building, Millennium Plaza, Gurgoan to the respondent. The lease period agreed upon was for three years commencing from 19.08.2011. Clause 2.2 of the Lease Deed provided for a restriction on the right of respondent/lessee to terminate the Lease Deed until the expiry of initial three years period, which was prescribed as the Lock-in period. Clause 2.2 is reproduced herein below:

“2.2 The Lessee shall not have a right to terminate this Lease Deed until the expiry of the initial 3 (three) years ("Lock-in Period") from the Commencement Date, except as specifically stated in this Lease Deed at any point of time at its sole discretion, subject to a 3 (three) months prior notice.”

3. The respondent, upon change of its management sought to terminate the Lease Deed and with this intent sent a notice dated 28.02.2013 seeking termination of the Lease Deed with effect from 31.05.2013. The disputes between the parties arose as the petitioner claimed that the lease cannot be terminated during the Lock-in period and in any case, even if the respondent vacates the premises, it is liable to pay the lease rental for the unexpired period of the Lock-in period.

4. A Sole Arbitrator was appointed by this Court and the Arbitration Proceedings have resulted in the Impugned Award with the Arbitrator holding that though the termination of the Lease Deed by the respondent during the Lock-in period of three years was not in consonance with the terms of the Lease Deed, the petitioner could not insist on the payment of the lease rental for the balance Lock-in period. In this regard, the Arbitrator noted that there is no term in the

Lease Deed which imposes any liability upon the respondent to pay the lease rental for the balance Lock-in period. The Arbitrator further held that the nature of the claim of the petitioner was that of damages for breach of the contract and as the petitioner had failed to lead any evidence in support of such claim, the claim could not be granted. The Arbitrator, therefore, on an appreciation of evidence led before him granted nominal damages quantified at Rs.60,000/- for breach of terms of the Lease Deed apart from holding that the respondent is also liable to pay the rent uptill 31.05.2013 along with the car parking charges.

5. Learned counsel for the petitioner, relying upon Clause 2.2 of the Lease Deed, submits that the said Clause prohibits termination of the lease within the Lock-in period and as the respondent has been held guilty of breach of the Lease Deed, as a necessary sequitur, it should have been held liable to pay the rent for the balance Lock-in period as well.

6. I am unable to agree with the said submission. A breach of Clause 2.2 of the Lease Deed would indeed make the respondent in breach of the contract. For such breach, the petitioner would then have to prove its damages in accordance with Section 73 of the Indian Contract Act, 1872 (hereinafter referred to as the 'Contract Act'). In the present case, it has not been claim by the petitioner that the Lease Deed contains any provision for liquidated damages as provided under Section 74 of the Contract Act and therefore, onus of proving damages under Section 73 of the Contract Act was on the petitioner.

7. Learned counsel for the petitioner further contended that though the petitioner had not led any evidence in support of its claim for damages, the respondent had filed evidence by way of an affidavit dated 10.05.2014. The petitioner filed a response to this affidavit on 16.05.2014 making the following submissions:

"Further, the Deponent has been informed by the Counsel for the Claimant that the Respondent has made a statement before the Hon'ble Tribunal that the subject property has been let out on lease by the Claimant. It is submitted that the statement is a bald lie. The Claimant has not let out the subject property."

8. Learned counsel for the petitioner submits that this could have been considered as evidence in support of the claim for damages.

9. I am unable to agree with the submission made by the counsel for the petitioner. Apart from the fact that the reply relied upon was merely a statement and not evidence, the Arbitrator in the Impugned Award has taken note of the fact as to how, repeatedly, the petitioner was asked to lead evidence in support of its claim and the petitioner refused to avail such opportunity. Making a statement in reply cannot take the place of leading evidence.

10. In view of the above, I find no merit in the present petition and the same is dismissed, with no order as to cost.

NAVIN CHAWLA, J

AUGUST 01, 2018/Arya