

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.873 of 2018
and A.Nos.7677 to 7679 of 2018

YSI Automotive India Private Limited,
No.112, Singadivakkam,
Kanchipuram Taluk,
Kanchipuram - 631 561
rep. by Mr.Edward Geoge.A

.. Petitioner

Vs.

1. LIC Housing Finance Ltd.,
Harrington Chambers, Block "C",
No.30/1A, Abdul Razack 1st Street,
Saidapet, Chennai-600 015.

2. Kamalraj

.. Respondents

* * *

Prayer : Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate and decide the disputes between the parties herein and further pleased to grant liberty to the petitioner to file its claims in terms of Section 23 of the Arbitration and Conciliation Act, 1996 before the said Sole Arbitration for adjudication.

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For Petitioner : Mr.Inthu Karunakaran

For Respondents : Mr.R.Prasath for R1

Served - No appearance for R2

ORDER

The petitioner has filed this Original Petition seeking for appointment of a Sole Arbitrator to adjudicate and decide the disputes between the parties herein

2. There was a Lease Deed dated 23.03.2013 between the petitioner / lessee and the second respondent / lessor. The petitioner / lessee paid a sum of Rs.2,40,000/- as Refundable Security Deposit (SD) to the second respondent, which was mentioned in Clause 3.3. of the Lease Deed and the tenure of the said deed was for 11 months initially, which was extended periodically on mutual consent. The petitioner claimed that it was regular in payment of monthly rents. The petitioner was informed by the first respondent that the second respondent / lessor had availed loan from the first respondent and when he defaulted in repayment, the said account was declared as Non Performing Asset (NPA) and proceedings under the SARFAESI Act was initiated, which culminated into the transfer of the subject flat to the first respondent. Thus, the first respondent stepped into the shoes of the second respondent and asked the petitioner to pay the monthly rents to the first respondent in terms of Clause 6 of the Lease Deed. Based on the said direction, the petitioner cleared the outstanding rental arrears and also continued to pay the rent amounts from

November, 2016 to the first respondent. The petitioner vacated and handed over the vacant possession of the flat on 05.03.2017 to the first respondent, after giving two months prior notice, as contemplated, and also paid the rent till that date. When the petitioner sought for refund of the SD, the first respondent did not oblige. The petitioner claimed that Clause 3.6. of the Lease Deed permits the petitioner to occupy the premises without paying rent till the SD is refunded. Since there was a delay in refund of SD, the petitioner is entitled to claim interest at the rate of 18% p.a. on the SD.

3. The petitioner sent a legal notice dated 16.12.2017 to the first respondent seeking refund of SD with interest and also nominated their representative to resolve the dispute amicably as per clause 12 of the Lease Deed. The petitioner also vide notice dated 20.08.2018 appointed their arbitrator and sought for the first respondent to appoint their arbitrator. Since the first respondent failed to respond to the said notices in the manner known to law, the petitioner is before this Court in this petition.

4. The petitioner also filed A.Nos.7677 to 7679 of 2018 seeking for certain interim reliefs against the first respondent.

5. Resisting the prayer of the petitioner, the first respondent filed a counter-affidavit dated 03.12.2018, wherein, it is stated that the second respondent availed loan to the tune of Rs.45.36 lakhs and executed necessary mortgage documents in its favour. As per the terms of the loan agreement, without permission of the first respondent, the second respondent ought not to have given the subject property on lease. Since there was default in repayment of loan amount, SARFAESI proceedings was initiated and since there was no approval granted by the first respondent to the second respondent to enter into the lease agreement, the same is *non-est* in the eye of law and as such, any dispute between the petitioner and the second respondent ought to have been settled by them and there is no arbitrable dispute with the first respondent.

6. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the first respondent, who in the first instance vehemently opposed the petition, has agreed for appointment of any Advocate of this Court as the sole Arbitrator, so also agreed by the learned counsel for the petitioner.

7. Considering the submissions of the learned counsel for the petitioners, this Court appoints Mr.Santhosh Nagarajan, Advocate

(En.No.MS1980/2006), having office at No.77, Law Chambers, High Court Buildings, Chennai-600 104 (Mobile No.98400 30758), as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The appointment of the Arbitrator will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

8. The Original Petition is ordered accordingly. The parties shall bear their own costs. Consequently, the connected applications are closed. It is open to the petitioner to approach the learned Arbitrator for seeking any interim relief, if it is advised so, in the manner known to law.

26.11.2019

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PUSHPA SATHYANARAYANA, J.

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