

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

O.S.A. No. 109 of 2021
and
C.M.P. No. 5127 of 2021

Mrs. A.Kalarani

...Appellant

Vs.

M/s. Aditya Birla Fashion and Retail Limited
Formerly known as
M/s. Pantaloons Fashion & Retail Limited
Represented by its Authorised Signatory
Mr. Sudarshan
Nos.701-704, 7th Floor
Skyline Lcon Business Park
86-92, Off Andheri Kurla Road
Marol Village, Andheri (East)
Mumbai - 400 059.

... Respondent

Original Side Appeal filed under Order XXXVI Rule 1 of the
Original Side Rules read with Clause 15 of the Letters Patent,
praying to set aside the order dated 22.12.2020 passed by
Learned Judge in O.A. No. 639 of 2020.

For Appellant : Mr. P.V.S.Giridhar

For Respondent : Mr. Dinesh Kumar

J U D G M E N T

(Judgment of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2. The Appeal has been filed against the order of interim injunction passed by the Learned Single Judge under Section 9 of the Arbitration and Conciliation Act, 1996 restraining the Appellant from interfering with the supply of water and electricity to the Respondent and the use of the parking lot in the Application filed by the Respondent.

3. The Appellant is a landlord and the Respondent is a Tenant in respect of the commercial property, viz., GK Towers in Survey No. 62, situated at Alagapuram, First Cross Road, Near Fairlands, Sardha College Road, measuring to an extent of 21,169 square feet for a period of 12 years owned by the Appellant/landlord. A Lease Deed, dated 29.07.2015 registered as Document No. 4576 of 2015 on the file of Sub-Registrar Office, Suramangalam, Salem, was entered into between the Appellant / Landlord and the Respondent / Tenant and Rs. 43,57,276/- was paid towards security deposit / rental advance fixing lease amount for the twelve years in the following manner:-

Block /Term of three years from the rent commencement date	Rent / per month
First to Third year	Rs.6,22,468/-
Fourth to Sixth year	Rs.6,97,164.16
Seventh and Eighth year	Rs.7,80,823.86
Tenth to Twelfth year	Rs.8,74,522.72

4. When everything was going well, due to lock-down, there was no business activity and therefore, the Respondent /Tenant could not pay the rent. As per the terms of the Registered Lease-deed under clause 38 "Force Majeure", they did not pay the rent. Therefore, the Respondent /Tenant terminated the tenancy and agreed to vacate the premises by 09.09.2020 and sought for refund of security amount / rental advance.

5. However, on re-opening, after lock-down was lifted, the Respondent /Tenant is said to have paid common area maintenance charges and water bill payment etc. However, it is alleged that the Appellant /Landlord illegally prevented the Respondent / Tenant from using the common area and cut off the electricity. In view of that, the Appellant /Landlord issued notice dated 14.09.2020 invoking Arbitration clause 45 in the Lease Deed. There was a reply from the Respondent on 15.09.2020 stating that the Arbitration could be only at Mumbai.

6. Since the amenities were cut-off, the Respondent filed Petition before this Court under Section 9 of the Arbitration and Conciliation Act, 1996. In the said application, an interim order was granted. The said order is being challenged before this Court.

7. Mr. P.V.S. Giridhar, Learned Counsel for the Appellant would submit that the Appellant could not present the case properly as the previous counsel passed away and the Appellant was not permitted to file Counter-Affidavit. In spite of the

request made on his behalf to file Counter-Affidavit, time was not extended, based on a wrong statement of the Respondent that the Appellant refused to terminate the contract especially, when the Respondent had requested the termination and also stopped the supply of water and electricity apart from not returning the huge amount as advance, which has been paid by the Respondent.

8. Therefore, the order has to be clarified or order has to be set aside. He would submit that the Respondent has not paid the amount. More over the Appellant is not responsible for cutting-off electricity connection or water connection. Since the Respondent failed to pay the water charges and electricity charges, they were cut-off and for that the Appellant cannot be held responsible. Therefore, he seeks for vacating the order passed by the Learned Single Judge.

9. Mr. R.Dinesh Kumar, Learned Counsel appearing for the Respondent submits that by consent, the Learned Single of this Court has appointed an arbitrator on 22.02.2021 in O.P. No. 648 of 2020. Therefore nothing survives in the Original Side Appeal.

10. Taking into consideration of the fact that the Arbitrator has already been appointed, all the issues could be agitated before the Learned Arbitrator including the issue of non-payment of rent and other charges as made by the Appellant.

11. With the above observations, this Original Side Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

Maya/ay
To

The Sub Assistant Registrar,
Original Side Section,
High Court of Madras, Chennai.

+1cc to Mr.P.V.S.Giridhar, Advocate SR.No.20045
+1cc to Mr.B.Dinesh Kumar, Advocate SR.No.20002

O.S.A. No. 109 of 2021
and
C.M.P. No. 5127 of 2021

SSN(CO)
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