

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P No. 936 of 2015

M/s. Rattha Holding Company Pvt. Ltd.,
Rep by its Director Mr. Gurmeet Sidana
No.37, TTK Road, Alwarpet,
Chennai – 600 018.
Petitioner

Versus

1. M/s. Global Talent Tract Pvt. Ltd.,
Represented by its CCDO Mr. Siva Sankar Kalive
'Reginsis' 6th Floor, Delta II Building, Giga Space
Viman Nagar, Pune – 411 014.

2. Justice Mr.T. Somasundaram,
Former Judge, High Court Madras,
New No.1, 15th Street, H- Block,
Anna Nagar West, Chennai – 600 040.
Respondents

PRAYER : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 03.10.2015 passed by the Arbitral Tribunal in so far as as against the Petitioner, reject the claims of the Respondent and allow the counter claim of the Petitioner;

Arbitrary remit to the arbitral Tribunal herein to decide the issue in accordance with the findings of this Hon'ble Court and award cost in favour of the Petitioner and against the Respondents.

For Petitioner : Mr.K. Suresh
for Mr.J. James
For Respondents : Mr. B. Sundarshan for R1

ORDER

This original petition has been filed to set aside the award dated 03.10.2015 passed by the Arbitral Tribunal.

2. The brief facts leading to filing of this original petition is as follows:

The claimant is a company incorporated under the Companies Act, 1956 and is in the business of providing training and services to various IT companies. The petitioner herein is the landlord. Based on the representations, assurances and warranties of the petitioner, the respondent/claimant agreed to take on lease an office premises being part of the ground floor of the building described as Block 'C' having a built

up area of 12,382 sq.ft earmarked as unit G1 along with 12 car parking slots, apart from a fully furnished air-conditioned cafeteria space of 500 sq.ft at the basement of the building.

3. Accordingly, the agreement came to be executed between the parties on 25.11.2010 incorporating all the details of the lease premises, rent, security deposit, rights and obligations of both the parties, termination of agreement, dispute resolution mechanism etc.

4. Apart from the above lease deed, a maintenance agreement was also entered between the parties on the same day for providing other maintenance like water, power, waste disposal etc for a sum of Rs.45,000/- for the period between 15.12.2010 to 13.12.2012 and at Rs.77,292 for the period effective from 01.04.2011.

5. However, in the month of April 2011, the petitioner has given

possession of only the office space Unit G1 at the ground floor and

promised to hand over possession of the Cafeteria space shortly stating that construction work for the same was under progress.

6. When the matter stood, the respondent/claimant required additional space for its office use, therefore, another lease deed dated 29.09.2011, came to be executed between the parties under which the petitioner had agreed to lease out office space of 4,250 sq.ft., ear marked as Unit F2 in the ground floor of Block 'C' along with 1,000 sq.ft area at the basement to be used as Cafeteria Food Court. The above space is in addition to the already leased out area of 12,382 sq.ft., under the first lease deed dated 25.11.2010. The rent fixed for the said office space of 4,250 sq.ft was at Rs.1,70,000/- per month from 20.07.2011 or from the date when possession was handed over in fully furnished condition by the petitioner. The period of lease was for five years. There shall be a lock-in period of 36 months from the lease commencement date.

The other clauses pertaining to the termination, arbitration, rights and liabilities of both the parties were all the same as mentioned in the previous lease deed dated 25.11.2010.

7. Further, the petitioner has provided space for cafeteria in 6th floor for time being. However as per the second contract, no cafeteria space has been provided. Therefore, the respondent has issued a letter to the petitioner dated 30.11.2012 seeking resolution of all pending issues including provision of furnished cafeteria space by December 2012. The petitioner has sent a reply notice dated 11.12.2012 admitting the default and delay in providing cafeteria space and gave technical reasons like seepage of water in the basement and further promised to rectify the same and keep it ready by the end of January, 2013. The respondent/claimant was constrained to issue notice to the petitioner on 08.01.2013, whereby, they terminated the Lease deeds forthwith and further informed the petitioner that they will be vacating the premises effective from 12.01.2013. However, the respondent's case is that the

demand for rentals of the unexpired portion of the lock-in period is illegal, inasmuch as there is no obligation on the part of the respondent/claimant to pay such rentals if the Lessor committed breach of the terms of the lease deeds. According to the respondent/claimant, since the non provision of cafeteria space is an admitted breach, there is no liability on the part of the respondent/claimant to pay any rental for the unexpired lock in period. Thereafter, the matter has been referred to the learned Arbitrator and the claimant has made the following claim:

i. to refund the claimant the security deposit of Rs.52,75,000/- to the claimant along with interest at 24% from the date of termination of the lease deeds viz 8.1.2013 till date of realization of the amount.

ii. To pay the claimant a sum of Rs.13,269,026 (Rupees one crore thirty two lakhs sixty nine thousand and twenty six only) being

*damages towards loss in business of the claimant
with interest at 24% p.a. from 27.11.2010 till the
date of realization of the amount; and*

*iii. to pay cost of this arbitration
proceedings.*

8. The learned Arbitrator has passed the award on 03.10.2015,
in which para No.2.11 reads as follows:

“2.11.According to the claimant on account
of fundamental breach committed by the respondent
of the terms of the lease deeds dated 25.11.2010 and
29.09.2011, the claimant was not only entitled for the
refund of the security deposit of Rs. 50,00,000/- and
also the electricity deposit of Rs. 2,75,000/- with
commercial rate of interest at 24% p.a. but also
entitled to be compensated for the losses suffered by

them in their business as damages and according to the claimant, the following are the losses suffered by them;

a. Rs. 1,18,11,903/- (Rupees one crore eighteen lakhs eleven thousand nine hundred and three only) due to withdrawal of clients and refusal of certain clients to ink deals with them;

b. Rs.42,534/-(Rupees forty two thousand five hundred and thirty four only) towards travel expenses in relation to dispute resolution;

c. Rs. 1,25,000/- (Rupees one lakh twenty five thousand only) towards legal expenses for filing Sec.9 application before Hon'ble High Court of Madras;

d. Rs.12,89,589/-(Rupees twelve lakh eighty nine thousand five hundred and eighty nine only) towards expected return on huge investment of

Rs.1,20,34,150/- on IT infrastructure, which went

unutilized due to compulsion to vacate the premises.

Thus according to the claimant, the respondent is liable to pay the claimant a sum of Rs. 1,32,69,026/- (Rupees one crore thirty two lakhs sixty nine thousand and twenty six only) as damages towards loss in business for the breach of the terms of the lease agreement committed by them with interest at 24% p.m from 27.11.2010 till date of realization of the amount.”

9. It is the contention of the learned counsel for the petitioner that they had leased out the fully furnished premises consisting of all the constructed space forming part of the ground floor of the building described as Block 'C' with the built up area of 12,538 sq.ft earmarked as Unit G-1 along with 12 car parking slots in the said Tek Meadows

together with 500 sq.ft. to be used by the respondent/claimant as a cafeteria space and both the parties entered into lease agreement dated 25.11.2010. After being satisfied with provisions in the said premises, under the lease deed dated 25.11.2010, the respondent/claimant requested the petitioner for additional accommodation and that the petitioner provided an additional space of 4,250 sq.ft earmarked as Unit F-2 in the same Block 'C', Ground Floor and entered into the 2nd lease agreement dated 29.09.2011. Even though the agreement signed on 29.09.2011, the second lease deed was executed after a period of 10 months of first lease deed dated 25.11.2010. When they took possession of the premises covered by the second lease deed, there was no complaint about the non provision of the cafeteria space in the basement. Under both the lease agreements, the duration of lease was for a period of 5 years which can be extended for further two terms of three years each at mutual consent of both the parties. There were separate agreements for maintenance as well as a separate agreement dated 27.8.2011 for electricity deposit. The respondent/claimant had paid a sum of Rs.40 lakhs for the first lease

deed; a sum of Rs.10 lakhs for the second lease deed as security deposit and a sum of Rs.2,75,000/- towards electricity deposit and totally a sum of Rs.52,75,000/- as refundable security deposit.

10. It is contented that either party shall not be entitled to terminate the lease deed for a initial period of 36 months from the lease commencement day.

11. It is the contention of the learned counsel for the petitioner that, as far as the possession is concerned, the termination has happened during the lock-in period, and hence, the petitioner is entitled to rent as per the contract. There was no breach on the part of the petitioner.

12. The petitioner/counter claimant on the basis of the averments in their defence statement made counter claim praying to direct the claimant to pay a sum of Rs.4,11,17,269/- to the petitioner/counter claimant as compensation.

13. On consideration of above pleadings and hearing the counsel for the parties, the learned Arbitrator has framed the following issues for consideration, on 26.06.2014:

1. “ *Whether the lock in period of 3 years as specified in the deeds of the lease & Maintenance entered between the claimant and the respondent are valid in law in the absence of registration of such deeds?*
2. *Whether the respondent has committed breach of the agreements by not providing cafeteria space to the claimant as provided in the lease deeds?*
3. *Whether the claimant is entitled to terminate the deeds of lease and maintenance for the reason of non provision of cafeteria space?*
4. *Whether the claimant is entitled for the refund of security deposit with interest at 24% p.a from 08.01.2013 till the date of realization, when they terminated the lease during the lock in*

period?

5. *Whether the claimant is entitled to claim liquidated damages towards business loss along with the interest at 24% p.a from 27.11.2010 till realization of the same as prayed for when they terminated the lease within the lock in period?*
6. *Whether the respondent / counter claimant is entitled to claim rent for the premises for unexpired lock in period?*
7. *Whether the claimant is liable to pay rent to the respondent / counter claimant for the period from February 2013 to August 2013?*
8. *Whether the respondent / counter claimant is entitled to claim the expenses for the tailor made premises to suit the business of the claimant when they terminate the lease during the lock in period?*
9. *Whether the respondent / counter claimant is entitled to claim damages caused to the premises when the claimant were in occupation?*
10. *Whether the respondent/ counter claimant is entitled to claim of*

loss of business opportunity when the claimant delayed in handing over possession of the premises?

11. Whether the respondent / counter claimant is entitled to claim loss due to non investment of bank guarantee amount and loss due to furnishing the bank guarantee from the claimant?

12. Whether the claimant/ respondent are entitled to interest on the amounts claimed? If so on what sum and at what rate and for which period?

13. Whether the claimant / respondent are entitled to costs?

14. To what reliefs are parties entitled to? ”

14. The claimant examined two witnesses as CW1 and CW2 on their side and through them marked the documents Exs.C1 to C9 series in support of their case.

15. The petitioner examined three witnesses as Exs.RW1 to RW3 and through them, marked the documents Exs.R1 to R44, to

substantiate their case.

16. On the basis of the evidence and materials, learned Arbitrator has allowed the claim of the respondent and dismissed the counter claim of the petitioner, against which, the present original petition is filed by the petitioner.

17. Though several grounds have been raised by the learned counsel for the petitioner, the main plank of attack is that the learned Arbitrator has not considered the terms of contract fully and Arbitrator has considered both the contracts as continuous one. On the other hand, the two lease deeds were independent. It is his further contention that the learned Arbitrator held that the breach in respect of the first lease agreement dated 25.11.2010 goes to the root of the matter. Further, it is his contention that, as far as the first lease agreement is concerned, though cafeteria space of 500 sq.ft at the basement of the building is mentioned, the cafeteria space of 1000 sq.ft has been provided in the 6th

floor which has been occupied by the respondent without any rent.

18. It is the further contention of the learned counsel for the petitioner that the second lease deed was executed between the parties for separate place, including the additional cafeteria area of 500 sq.ft, merely because of some typographical error found in the document about the extent. It cannot be said that the area is not more than 500 sq.ft agreed in the contract. At any event, it is his contention that, maintenance agreement executed in respect of two lease deeds clearly indicates that they were two separate contracts. Therefore, breach in respect of first agreement could not be a reason for termination of the second contract.

19. It is the further contention of the learned counsel for the petitioner that the second lease deed does not provide time limit for handing over the space for cafeteria. When the time is not fixed for handing over the cafeteria area, termination notice sent will go against the contract and violate the contract terms, particularly, the lock in period

which makes the parties to pay the lease rent irrespective of the lease period. At any event, there is no breach on their part. Hence, the learned counsel submitted that the entire award is nothing but result of perversity.

20. The learned counsel for the petitioner further contended that the respondent handed over the keys to the petitioner on 10th September 2013 only as per the direction of this Court in application filed under Section 9 of the Arbitration and Conciliation Act, 1996. Therefore, from the date of termination till handing over the key, the respondent is liable to pay the rent which has not been considered by the learned Arbitrator. Further, as per the contract, the learned Arbitrator ought to have allowed the counter claim. Therefore, prayed for allowing the application to set aside the award.

21. Learned counsel for the respondent would submit that though separate lease agreements were executed, in fact, the second lease deed is only in respect of additional space. The specific condition of the

contract makes it very clear that cafeteria space is to be provided in the ground floor. Despite two agreements were executed, one in the year 2010 and another in 2011, the cafeteria space was not provided in the ground floor which itself is the breach on the part of the land lord. Therefore, having committed breach, one cannot withhold or retain the security deposit made by the claimant. The learned Arbitrator has considered the entire evidence and recorded the factual aspects. Therefore, this Court cannot re-appreciate the evidence under Section 34 of the Act. Hence prayed for dismissal.

22. It is well settled that the scope of this Court while exercising jurisdiction under Section 34 of the Act, is very limited. Similarly, it is also well settled that, when the learned Arbitrator has taken a view and given proper reasons for recording a finding, merely because some other view is also possible, the award cannot be interfered with. It is also to be noted that, while dealing with Section 34, this Court cannot sit as an Appellate Court to re-appreciate the entire evidence. The

Court cannot act as an Appellate Court or revisional Court, but can only find out whether the award is vitiated on any of the grounds contemplated under Section 34 of the Act.

23. It is relevant to note that the lease agreement dated 25.11.2010 entered between the parties, which makes it very clear that the original lease was entered in respect of 12,382 sq.ft ear marked as unit G1 along with 12 car parking slots together with cafeteria space of 1000 sq.ft at the basement of the building. The first phase of the leased premises should commence from 15.12.2010 and the second phase of the leased premises should commence from 15.04.2011 or within four months from completion of first phase as per the agreement. The cafeteria space measuring 500 sq.ft should be allowed at the basement of the building which was not provided on 15.12.2010, whereas, security deposit of Rs.50,00,000 has been paid.

24. Clause X of the lease deed provides for termination of the

lease, under which, both the parties are not entitled to terminate during the initial lock-in period of 36 months and if the Lessee terminates the lease deed within the lock in period of 36 months, then the Lessor will be entitled to the rents for the unexpired lock-in period and if the Lessor decides to terminate the lease deed within the lock-in period, then the lessor shall pay the lessee the amount equal to the rent for the expired lock-in period. The above clause makes it clear that if either of the parties terminates the lease for breach of any of the terms of the lease deed, then the provision of invoking the lock-in period does not arise to insist the claimant to pay the rent.

25. Similarly, the second lease deed was also executed on 29.09.2011 for 4250 sq.ft of Super Built up area space, earmarked as Unit F-2 on the Ground floor, wherein cafeteria space was mentioned as 1000 sq.ft in the agreement but the fact remains that the maintenance agreement was executed on the same day. With regard to the second agreement, in fact, what should be left is 500 sq.ft of cafeteria space, but the same condition is also found in the second lease deed. Therefore, to invoke the clause of

lock-in period, there should not be any breach on either side. One of the main conditions in both the lease deeds is that the cafeteria space has to be provided in the ground floor.

26. In the first lease deed, specific time limit has been given within which the cafeteria space should be provided and the same was commenced from 15.12.2010. However, it has not been done, whereas, it is an admitted fact that, in the 6th floor, an extent of 1000 sq.ft was given as cafeteria space. Thereafter, similarly, in the second lease agreement dated 29.09.2011 also, cafeteria space was agreed to be given in the ground floor. Though there is mention about lease commencement date and rent commencement date, which shall be from the date when the possession of fully furnished cafeteria space is handed over to the lessee, there was no specific time limit fixed in the second lease deed. The cafeteria space also had not been handed over within a reasonable time, as held by the learned Arbitrator.

27. Only after issuing termination notice by the lessee in the year 2013, the petitioner has sent a reply indicating that he will hand over

the cafeteria. Therefore, when there is a material breach committed by the petitioner by not handing over the cafeteria, which is one of the main obligations in the agreement, it cannot be said that the respondent has vacated the premises only pursuant to the termination notice and he shall pay the rent as per the agreement during the lock-in period. In fact, there was breach on the part of Landlord in handing over cafeteria space in the ground floor. Area specifically agreed as cafeteria space has not been provided. Therefore, it cannot be said that the respondent is liable to pay rent for the entire lock-in period, when there is a specific breach committed by the petitioner.

28. Though as per second agreement, there is no time limit fixed to hand over the cafeteria space, the same should have been given within a reasonable time. The learned Arbitrator has relied upon Section 46 of the Contract Act with regard to time for performance of promise, when no application is made and no time is specified, and on the factual analysis of the materials placed before him, recorded a finding

after analysing all the contractual aspects. Hence, when the learned Arbitrator has taken a plausible view, the same cannot be re-appreciated under Section 34 of the Arbitration and Conciliation Act, 1996. There is no perversity in the findings of the learned Arbitrator.

29. On a perusal of the detailed award, the learned Arbitrator has in fact rightly rejected the counter claim by the landlord, since he has committed breach by not handing over the cafeteria space and also rejected the claim of the claimant for damages, and what was ordered by the learned Arbitrator is only the refund of security deposit with interest at the rate of 9% from 01.02.2013 till the date of realisation.

30. With regard to the submissions of the learned counsel for the petitioner that the learned Arbitrator has not taken note of the fact that key of the building was handed over by the respondent only in the month of September, the learned Arbitrator in Issue Nos.4 and 7 has considered all the relevant materials and factually recorded that the claimant was

always ready to deliver the keys of the leased premises on the refund of security deposit, since he has terminated the agreement for the breach committed by the petitioner and the allegation made by the petitioner that the claimant has not handed over the possession is not valid.

31. When the learned Arbitrator has factually recorded the findings after considering the oral and documentary evidence, this Court cannot re-appreciate the entire evidence. Therefore, the contention of the learned counsel for the petitioner that, at least they are entitled to get the rent till September, 2013, also cannot be countenanced. In fact, in para Nos.10.8 and 10.9, the learned Arbitrator has also considered the order passed by this Court and factually found and finally rejected the contention of the petitioner. Therefore, this Court is of the view that none of the grounds under Section 34 of the Act has been made out to interfere with the well reasoned award passed by the learned Arbitrator.

32. Accordingly, this original petition is dismissed. No costs.

Consequently, connected application is closed.

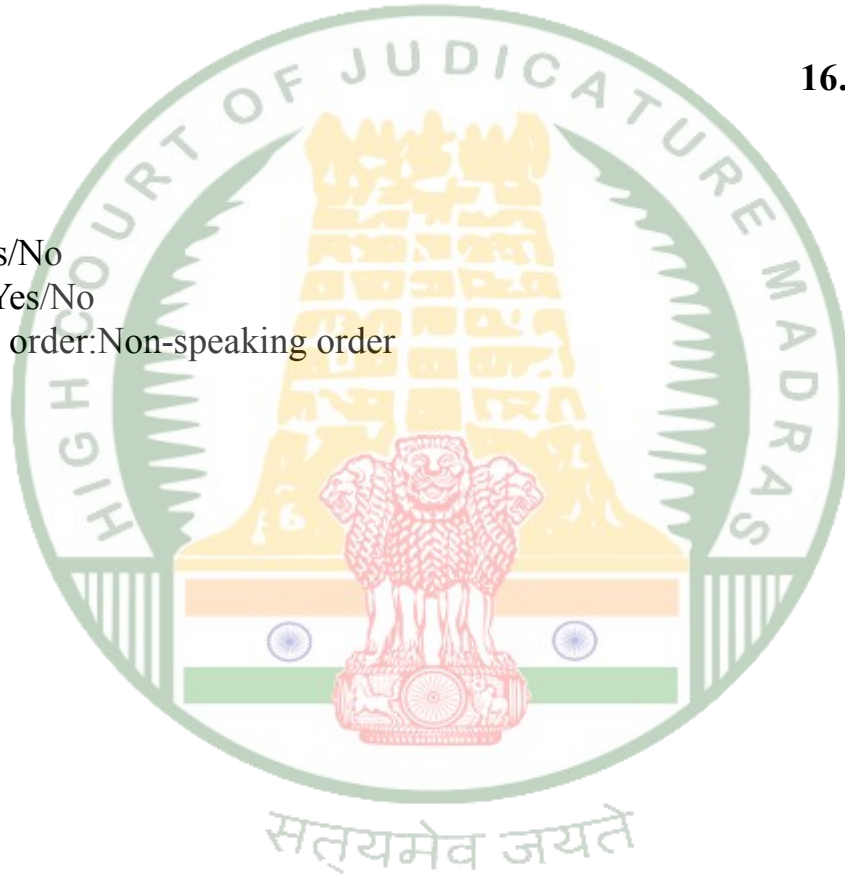
16.09.2021

msv

Index:Yes/No

Internet:Yes/No

Speaking order:Non-speaking order

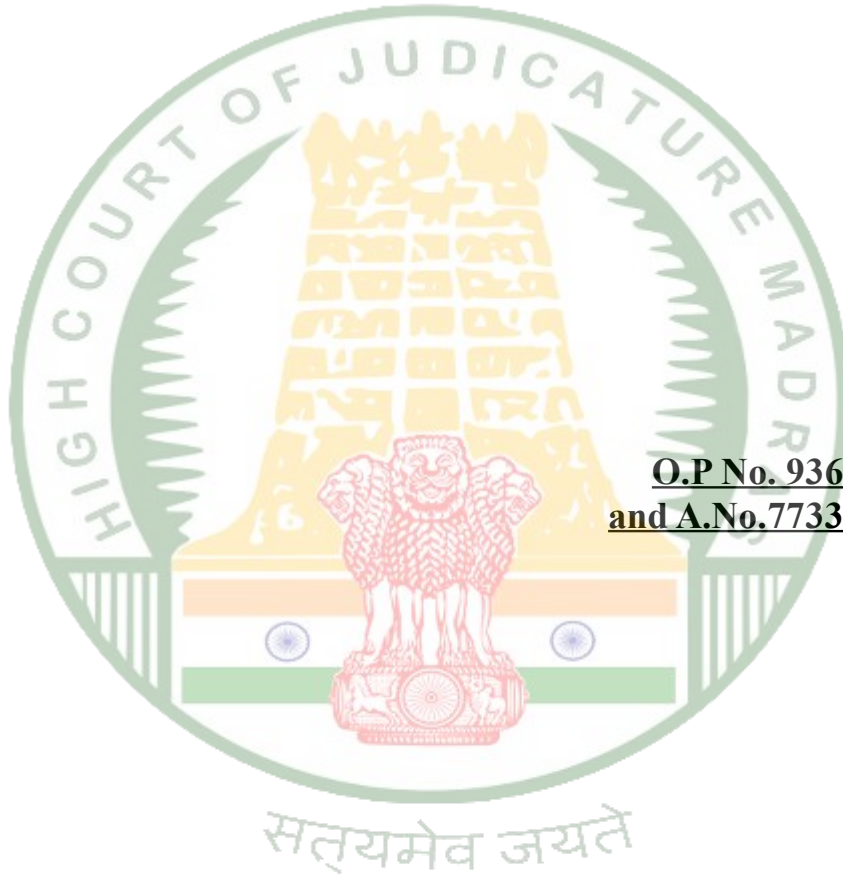


WEB COPY

O.P No. 936 of 2015

N. SATHISH KUMAR, J.

msv



O.P No. 936 of 2015
and A.No.7733 of 2015

WEB COPY

16.09.2021