

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

OP.No.648 of 2020

M/s. Aditya Birla Fashion and Rentail Limited
Formerly known as
M/s. Pantaloons Fashion & Retail Limited
Mr. Sudarshan
No.701-704, 7th Floor,
Skyline Lcon Business Park,
86-92, Off Andheri Kurla Road,
Marol Vilage, Andheri (East)
Mumbai – 400 059.

...Petitioner

Vs

Mrs. A. Kalarani

... Respondent

Prayer : Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to a suitable person be appointed as the sole Arbitrator in terms of Clause 45 of the Lease Deed dated 29.07.2015 to arbitrate in the disputes and to give his Award.

For Petitioner : M/s. B. Dinesh Kumar
For Respondent : M/s. Pooja Jain
for M/s. Giridhar & Sai

ORDER

The above petition is filed for appointing a sole arbitrator in terms of Clause 45 of the Lease Deed dated 29.07.2015.

2. The case of the petitioner is that they had taken a showroom on lease admeasuring an extent of 21,169 sq. ft. from the respondent for the period of 12 years under the registered Lease Deed dated 29.07.2015. A rental advance of Rs.43,57,276/- was paid and the parties had agreed on the schedule of rent that would be paid for the entire period of lease. Clause 38 of the Lease Agreement provides 'Force Majeure' clause, which gives a right to the lessee to terminate the lease and the lessee, from the date of the termination, is not bound to pay the lease rental and the lessor is obliged to refund the security deposit.

3. The petitioner would submit that during the pandemic, the showroom had to be closed on account of the lockdown announced by the Government. Even after the lockdown had been relaxed, the showroom is

not earning the requisite income.

4. The petitioner would submit that they had paid the common area maintenance charges and the water bill on 28.08.2020 and their attempts to vacate the property has met with a stone wall. The respondent is not coming forward to refund the security deposit.

5. While the stalemate between the parties existed, the respondent had issued an email dated 14.09.2020 invoking the arbitration clause, requesting that an arbitrator be appointed at Salem. A detailed reply was sent by the petitioner stating that for the purpose of arbitration, the agreement had stated that the venue shall be at Mumbai and the proceedings should be conducted in English Language.

6. The petitioner had made a counter offer appointing an Arbitrator at Mumbai, to this, there was no response. Therefore, the petitioner has come forward with the above petition.

7. A counter has been filed by the respondent inter alia contending that the parties cannot be referred to arbitration, since the appropriate forum for hearing the dispute is only the Rent Control Court and also taking into consideration the latest judgment of the Supreme Court reported in “**2020 SCC Online SC 1018, in the case of Vidya Drolia vs Durga Trading**”, the Petition filed under Section 11 of the Arbitration and Conciliation Act was not maintainable.

8. That apart, this allegation made in the counter was denied by the petitioner.

9. The counsels had also made their submissions and the learned counsel for the petitioner would submit that the dispute which has arisen between the petitioner and the respondent is not one that would come under the jurisdiction of the Rent Control Act. The dispute in the instant case is only the refusal on the part of the respondent to permit the petitioner to

vacate and handover the vacant possession of the property and consequently refund the security deposit. The learned counsel would submit that this cause of action would not fall within the jurisdiction of the Rent Control Court.

10. The said argument has not been countenanced by the counsel for the respondent, however ultimately both parties agreed that the arbitration shall be conducted at Chennai, in the event of an Arbitrator being appointed.

11. Considering the fact that the dispute involved does not relate to either fixation of rent, or any of the subject falling within the jurisdiction of the Rent Control Act, the Court has to only peruse if there is an agreement between the parties with reference to the procedure that they had agreed for resolving their disputes. Clause 46 of the Lease Agreement provides for resolving the disputes through arbitration. The parties are agreeable to the arbitration being conducted at Chennai.

12. In these circumstances and in view of the parties having agreed for the arbitration at Chennai, Mr. K. Hari Shankar, Advocate is appointed as the arbitrator.

13. Accordingly, it is ordered as follows:

(i) Mr. K. Harishankar, HSB Partners, Capitale, 554-555, Anna Salai, Teynampet, Chennai - 600 018. Phone- 24355217-18, Cell: 9841076561, Email: hari@hsbpartners.com, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

ii) 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. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted at the Nani Palkhivala Arbitration Centre, New D.No.22, Karpagambal Nagar, Mylapore,

Chennai 600004. The Centre has been recognised as an Institution by orders of the Hon'ble Chief Justice dated 19.09.2005.

The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

22.02.2021

mrn

Index : Yes/No
Speaking order/non-speaking order

To,
Mr. K. Harishankar, HSB Partners,
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