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Arb. O.P(Com.Div). No.65 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.65 of 2022

V.George Gnanaseelan

... Petitioner

Vs.

M/s.S.C.Shah and Company Pvt Ltd.,
Represented by its Director, Mr.Bhavesh V.Shah,
Having office at No.3A, Heavitree Building,
No.47. Spur Tank Road, Chetpet,
Chennai – 600 031.

... Respondent

PRAYER : Original Petition is filed under Section 11 4(a) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent in respect to the lease deed dated 26.08.2009.

For Petitioner

: Mr.Praveen Alexander

ORDER

This petition has been filed under Section 11 4(a) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint a



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Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent.

2.Learned counsel appearing for the petitioner would submit that the present dispute pertains to the lease deed dated 26.08.2009, entered between the petitioner and the respondent and registered as document No.2738 of 2009 before the Sub-Registrar at Neelankarai. As per the lease deed dated 26.08.2009, the monthly rental amount was fixed at Rs.2,07,500/- plus service tax as applicable for the initial lease period of three years and thereafter the monthly rent amount was periodically increased and from September 2018, it was fixed at a monthly rental amount of Rs.3,15,582/- plus service tax as applicable. He would further submit that the respondent had paid the rental amount without default for one and a half years and thereafter, committed default. As on date, the respondent is liable to pay around a sum of Rs.29,00,000/-.

3.He would also submit that since the lease deed dated 26.08.2009 has expired on 31.08.2021, the petitioner sent an email to the respondent, requesting them to vacate the premises and handover vacant possession of the property to the petitioner, however, the respondent failed to do so. Therefore,



the petitioner was constrained to invoke the arbitration Clause 17 (ii) of the lease deed dated 26.08.2009. By invoking the said arbitration clause, the petitioner sent a legal notice dated 26.12.2022 to the respondent requesting them to give their consent to appoint Mr.S.Vasudeven, Advocate as the Sole Arbitrator, to resolve the dispute in respect of the said lease deed. However, the respondent neither responded to the said legal notice nor come forward to seek any redressal by way of arbitration. Hence, the petitioner has come up with the present petition.

4.Though notice has been served and the name of the respondent is printed in the cause list, none appeared on behalf of the respondent before this Court, which shows that the respondent is not interest to prosecute the case. Therefore, this Court proceeds to pass following orders.

5.Upon hearing, it is seen that as per the lease deed dated 26.08.2009, executed between the parties, the petitioner leased out his property to the respondent and as per the terms and conditions of the said lease deed, the respondent has to pay a monthly rental amount of Rs.3,15,582/- plus service tax as applicable. Since, the respondent committed default in making payments, the petitioner has called upon the respondent to make the payments of their



outstanding dues. For which, the petitioner used to give evasive answerers.

While so, on 31.08.2021, the lease deed got expired and when the petitioner asked the respondent to vacate the premises and handover the vacant possession, the respondent failed to do so. Therefore, the petitioner sent legal notices dated 26.12.2022, invoking the Arbitration Clause No.17(ii) as per the lease deed dated 26.08.2009 and requested the respondent to give consent to appoint the Sole Arbitrator nominated by hi. Even then, the respondent has not responded. Therefore, the petitioner has come before this Court seeking to appoint Sole Arbitrator in terms of the Clause 17(ii) of the lease deed dated 26.08.2009.

6.For better appreciation, Arbitration Clause 17(ii) of the lease deed dated 26.08.2009, is extracted hereunder:

17.Dispute Resolution/Arbitration/Choice of Law:

(ii) Arbitration. Any dispute arising out of or with respect to this deed shall be determined by arbitration in Chennai in accordance with the Arbitration and Conciliation Act, 1996 before a Sole Arbitrator mutually agreed upon. The language of the arbitration shall be English. The place of arbitration shall be Chennai. Each party will pay its own costs and expenses. The award of the



panel shall be accompanied by findings of fact and a statement of reasons for the decision. All parties agree to be bound by the results of this arbitration. All matters relating to such arbitration shall be maintained in confidence.

7. In view of the above submissions and a perusal of Clause 17(ii) of the lease deed dated 26.08.2009, it is clear that the present dispute is arbitrable in terms of the said agreement. Hence, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondent.

i) Accordingly, **Mr.B.S.Jhothiraman, Advocate, No.2, V.P.Colony, 3rd Cross Street, Ayanavaram, Chennai – 600 023, Contact No.9940512839**, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall 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, without influencing any of the observations made by this Court in this order.

iii) Learned Arbitrator is requested to conduct



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arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the respondent herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent herein.

8.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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