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Arb.O.P.(Comm.Div.)No.139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.139 of 2023

M/s.R.P.Rajaram Associates
Rep. by its Managing Partner
Mr.R.Parthiban
No.105, Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 104.
and
No.39, Habibullah Road,
T.Nagar,
Chennai – 600 017.

...Petitioner

Versus

Sunrise Distributors Private Limited,
Represented by its Directors,
(i) Mr.Selva Backiaraj
(ii) Mr.B.Subhash
at New No.135, Old No.80,
Habibullah Road,
T.Nagar,
Chennai – 600 017.

...Respondent

Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 praying to appoint Sole Arbitrator to arbitrate all the disputes between the parties.



For Petitioner : Mr.V.Anand
For Respondent : No Appearance

ORDER

The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner submitted that the petitioner firm leased out the ground floor of its property situated at No.103 (105), Dr.Radhakrishnan Salai, Mylapore, Chennai – 600 004 to the respondent vide unregistered Lease Agreement dated 20.01.2014. As per the said Lease Agreement, the respondent gave a sum of Rs.1,20,00,000/- to the petitioner and the parties have agreed for the monthly rent of Rs.12 Lakhs. While so, from December 2014 onwards, the respondent did not pay the monthly rent to the petitioner. In the year 2015, the respondent filed a petition in R.C.O.P.No.196 of 2015 on the file of XIII Small Causes Court,



Chennai, for fixation of fair rent. The learned XIII Judge, Small Causes Court, Chennai vide its order dated 15.11.2016 fixed the fair rent at Rs.10,00,999/-. Challenging the order passed in R.C.O.P.No.196 of 2015, the respondent preferred an appeal in R.C.A.No.71 of 2017 before the IX Small Causes Court, Chennai and the said appeal came to be dismissed on 20.10.2017. As against the dismissal order passed in R.C.A.No.71 of 2017, the respondent filed a Civil Revision Petition in C.R.P.No.4307 of 2017 before this Court, however, the same also came to be dismissed on 26.04.2022. Thereafter, the respondent filed a Special Leave Petition in SLP(Civil) No.9418 of 2022 before the Hon'ble Supreme Court. On 12.07.2022, the Hon'ble Apex Court has dismissed the said SLP as withdrawn. After the dismissal of SLP, the respondent filed a petition for condoning the delay in filing a Review Petition.

2.1. That apart, even before the dismissal of aforesaid Civil Revision Petition, the respondent preferred a Second Appeal in S.A.No.51 of 2021 before the Debts Recovery Tribunal II, Chennai and agreed to deposit the monthly rent amount of Rs.10,00,000/- as fixed by the learned XIII Judge, Small Causes Court, Chennai, into the escrow account. However, the



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respondent has paid a sum of Rs.10,00,000/- as monthly rent for a period of three months only and thereafter, defaulted in payment of monthly rent. As on 09.06.2022, the total outstanding rent amount payable by the respondent was Rs.7,64,87,113/-. Hence, the petitioner vide Notice dated 09.06.2022, terminated the tenancy and called upon the respondent to vacate the premises within 30 days of receipt of the said notice and also, called upon the respondent to pay the outstanding rent amount of Rs.7,64,87,113/- along with service tax upto July 2017 and GST thereafter, within 15 days from the date of receipt of that notice. Further, in the said notice, the petitioner called upon the respondent to furnish immovable property charge/security for the sum claimed. Even after the receipt of said notice, the respondent did not send any reply to it.

2.2. Since the respondent has committed default in payment of monthly rent, the petitioner is in arrears of property tax. Hence, the Corporation of Chennai has locked and sealed the petitioner premises in September, 2022, pursuant to which, excluding the petitioner, the respondent went to the Corporation of Chennai and gave an undertaking that they would deposit the rent of Rs.10,00,999/- towards the arrears of



property tax and also, sought the permission of Corporation of Chennai to run a Shopping Centre in the petitioner premises, but, the respondent did not honour the said commitment. The respondent is enjoying the petitioner's property without paying any rent. As on date, the arrears of rent payable by the respondent is more than Rs.8.5 Crores. Recently, the respondent has affixed a board in the petitioner premises stating that the shop in the possession of respondent is under renovation. The respondent has removed all its belongings from the petitioner premises and locked the premises without even using it.

2.3. The learned counsel further submitted that as per Clause 9(d) of the Lease Agreement dated 20.01.2014, if any dispute arises between the parties under the said agreement, the same shall be resolved by a Sole Arbitrator as per the provisions of the Act. For better appreciation, Clause 9(d) of the Lease Agreement dated 20.01.2014 is extracted hereunder:

“9. IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

(a)

(b)

(c)

(d) This agreement shall be governed by and construed in accordance with the laws of India. Any dispute under this agreement which the parties are not able to settle amicably within forty five (45) days from the date of arising of such dispute shall be referred to arbitration by



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a sole arbitrator in accordance with the Arbitration and Conciliation Act, 1996 at Chennai. The Proceedings of Arbitration shall be conducted in English. Subject to the above, the parties agree to submit themselves to the exclusive jurisdiction of the courts at Chennai.”

Hence, the learned counsel prayed this Court to appoint an Arbitrator, to adjudicate the dispute between the parties.

3. Despite the service of notice and name of the respondent is being printed in today's cause list, none appeared on behalf of the respondent.

4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute between the parties is arbitrable as per Clause 9(d) of the Lease Agreement dated 20.01.2014. Hence, this Court is inclined to pass the following order:

(i) The Hon'ble Mr.Justice E.Padmanabhan, Former Judge of this Court, Plot No.47, Olive Avenue, Injambakkam, Chennai – 600 115, Mobile No.9444856700 is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.



(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by her, equally.

(iv) In the event of non-appearance of the respondent before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondent.

6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the 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.

15.06.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

Note to Registry: Issue order copy on 14.07.2023



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KRISHNAN RAMASAMY, J.

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