Application No.2687 to 2689 of 2014

and

O.A.No.310 of 2014

R. MAHADEVAN, J.

For the sake of convenience, the parties will be referred as per their ranks in A.Nos 2687 to 2689 of 2014.

2. The applications in A.Nos 2687 to 2689 of 2014 have been filed by applicants claiming to be the franchisee of the 1st respondent to run a play school and certain disputes arose between them as the promise to yield the income of Rs 75,00,000/- and the entry of the students from play school to any of the schools in the patronage of chettinad foundation were not fulfilled.

3. Further, the applicants have also claimed that the respondents have withheld Rs 19,00,962/-, Rs 3,25,623/- and Rs 1,56,423/- due to each of them and have sought for a direction to deposit the sums due to them before this court.

4. Disputing the same,

the respondents have filed their counter contending that the claim lacks material particulars and the applicant has not satisfied the requirements under Order 38 Rule 5 of C.P.C. Further, they have contended that the claim was made without any legal basis and the applicants have breached the terms of the agreement on several occasions as a result of which the agreement was terminated on 01.03.2014. The respondents have also contended that the applicants have not deposited the money collected by them from the students into the account of the 1st respondent. The complaints are baseless and they never made any promise to accommodate the students in their patronage school and since they have subsequently appointed an arbitrator, sought for the dismissal of the applications.

5. Before filing the counter in the above applications, the 1st respondent has also filed an application in O.A 310/2014 seeking an interim injunction against the applicant in A.No 2687/14 to restrain her from running the pre-school at No 31/12, Annaswamy Street, Choolaimedu, Chennai-94 on similar lines contending that the continuation of the pre-school and the use of the study materials after termination of the agreement would affect their intellectual property right and cause grave prejudice, irreparable loss and injury to

them.

6. Refuting the contentions, the applicant has filed a counter claiming that the Trade mark of 'A School' and 'Chettinad Foundation' has been assigned to the applicant for five years by obtaining a licence fee of Rs 5,00,000/- and therefore, the applicant is entitled to use the same . With regard to misappropriation, the applicant has denied the same and alleged that the 1st respondent has failed to pay their 73% of share and that the 1st respondent has breached the terms of settlement in earlier application and a contempt application has been filed, that the negative covenants are invalid and sought the dismissal of the application.

7. Heard both the learned counsels and perused the documents.

8. The Learned Counsel for the applicants relying upon an article published in the newspaper, wherein the compensation was awarded by this court to the parents of the students in pre-schools of the 1st respondent for non-compliance of statutory norms, contended that the 1st respondent had all along been making false promises to accommodate the students in their school.

9. The learned counsel also contended that the students admitted in the pre-schools would automatically be admitted in the schools being run by the 1^{st} respondent and believing the same, the applicants have spent huge amount and had to face public outrage when admissions are not given.

10. The learned counsel has also relied upon Annexure F and H to contend that the applicants are entitled to 73% of the receipts and are entitled to use the trade marks in view of the franchise agreement and hence the injunction as sought for by the 1^{st} respondent cannot be granted.

11. The learned counsel also drew the attention of the advertisement of the 1^{st} respondent wherein the admission to main school was promised. Relying upon the judgments reported in 2011 (8) MLJ 809, Order in W.P No 34709/13 and 4040/14 and Review Applications 174,175,177 and 178 of 2014 and sought for the dismissal of the application in O.A 310/2014 and the applications filed by the Franchisees' are to be

allowed.

12. Per contra, the Learned Counsel appearing for the respondents have contended that no such promises were made to accommodate the students. The learned counsel also relied upon various clauses in the franchisee agreement to contend that the applicants have failed to perform their obligations and thereby breached the terms on several occasions.

13. The learned counsel also contended that the applicants have failed to render proper accounts and have not deposited the entire amounts collected by them from the students.

14. The learned counsel also contended that the right to use the mark would stand terminated upon the termination of the franchise agreement.

15. The learned counsel has also pointed out that the lease

agreements with the landlords were entered into by the 1st respondent and upon the termination of the franchisee agreement, the applicant is not entitled to continue the business more particularly at the same premises.

16. The learned counsel also relying upon the negative covenants in clause 15 of the agreement contended that the applicant in A.No 2687 is not entitled to run the preschool for three years and therefore, the 1st respondent is entitled for injunction. The learned counsel also contended that the applicants have not satisfied the requirements under Order 38 Rule 5 of C.P.C as neither the pleadings nor the documents establish and even a prima facie case warranting the direction as sought by the applicants. In support of his contentions, the counsel for the respondents has relied upon the decisions in 2014 (3) CTC 159 and O.S A 231 of 2011 and sought for the dismissal of the applications.

17. Upon perusal of the documents, it is clear that the applicants are entitled to 73% of the receipts from the students after deducting 20% towards Royalty and 7% towards marketing. The claim of the applicants are that though the amounts collected from the students were deposited, the 1st respondent

has failed to pay 73% of such collections, whereas, the case of the 1st respondent is that the entire amount has not been deposited. No documents have been submitted by the applicants to prima facie establish their claim.

18. The applicants have relied upon the orders of this court in Writ petitions 34709/13 and 4040 of 14, which were confirmed in the Review Application Nos. 174,175,177 and178/14 to contend that 36 A-Schools are runing by the 1st respondent without proper sanction and the Division Bench of this Court has directed the 1st respondent to pay compensation. The learned counsel has also relied upon the newspaper advertisement to show that despite making promises to admit the students of A –school, the 1st respondent has failed to do so.

19. Though it is evident that the 1st respondent has promised to accommodate the students in any of their schools, it is for the applicants to prove before the Arbitrator as to whether they have suffered loss or not.

20. In the judgment relied upon by the counsel for the 1st respondent in ***2014 (3) CTC 159 (Sundaram Finance Limited represented by its Senior Manager Mr.J. Thilak vs. Mr.M.K. Khunhabdulla),*** the Hon'ble Division Bench of this Court has held as follows:-

As such, a Court of Law is to act with utmost caution and circumspection before passing an order of interim measure like this under Section 9 of the Act, 1996. At a nebulous stage, the relief of requiring the opposite party to furnish security for the amount in question, being an extraordinary one, cannot be granted merely on the basis of vague or general allegations that the Respondent is about to dispose of the properties or to remove it beyond the jurisdiction of the Court, when they are totally unsupported by particulars and this would not be a fulfilment of requisites of Section 9 of the Arbitration and Conciliation Act, 1996. Furthermore, the Appellant/Applicant in an affidavit to support his contentions, must state as to which portion they are true to knowledge and the source of information should be disclosed and the grounds for belief should be stated. Also, an interim relief of requiring a party to furnish security and failure to do so, to result in attachment of properties are not to be passed/ordered because of the fact that no prejudice or hardship would be caused to the other side. Suffice it to point out that an order under Section 9 of the Arbitration and Conciliation Act, 1996 in regard to the prayer for requiring the opposite party to furnish security or in the arbitration the schedule mentioned properties can be passed only if circumstances exist of course to the subjective satisfaction of this Court, when the Appellant/ Applicant has made out a case ex facie for obtaining such an order.

25. It transpires that in the matter of Arbitration of dispute between the Appellant/Applicant and the Respondent (in respect of Agreement No.GZ-158693 dated 03.03.2012), an award was passed during February, 2014 and therefore, it is reasonable and prudent for the Appellant/Applicant to take further course of action, as deems fit and proper, in the manner known to law and in accordance with law. Looking at from any point of view, the order passed by the Learned Single Judge dated 09.04.2013 in Application

No.268 of 2013, in dismissing the Application, by observing that 'the averments made by the Applicant (Appellant) in mechanical manner does not make out any case for furnishing of security, when the loan is already secured etc.', cannot be found fault with, as opined by this Court. Viewed in that perspective, the Original Side Appeal fails. In the upshot of detailed qualitative and quantitative discussions and on taking note of the attendant facts and circumstances of the case in an encircling fashion, this Court comes to a resultant conclusion that the present Original Side Appeal sans merits and the same is dismissed, to prevent an aberration of Justice, without costs. Resultantly, the order, passed by the Learned Single Judge, dated 09.04.2013, in Application No.268 of 2013, is affirmed by this Court for the reasons assigned in this Appeal. Consequently, connected Miscellaneous Petition is closed.

21. The Division Bench of this Court in ***A-1 Biz Solutions, Chennai vs. Cascade Billing Center Incorporated (MANU/TN/2871/2011)*** has observed as under:-

"10. In this context, it is relevant to refer to the decision of the Honourable Supreme Court reported in (Aravind Construction vs. Kalinga Mineral Corporation) 2007 6 SCC 798 wherein the Honourable Supreme Court held that the exercise of powers under Section 9 of the Act must be based on well settled principles governing grant of interim relief. Further, in the decision of the Honourable Supreme Court in (Adhunik Steels Limited vs. Orissa Manganese and Minerals Pvt Ltd) AIR 2007 SC 2563 it was held as follows:-

"It is true that S.9 of the Act speaks of the Court by way of an interim measure passing an order for protection, for the preservation, interim custody or sale of any goods, which are the subject matter of the arbitration agreement and such interim measure of protection as may appear to the Court tobe just and convenient. The grant of aninterim prohibitory injunction or an interim mandatory injunction are governed by well known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was de hors the accepted principles that governed the grant of an interim injunction. Same is the position regarding

the appointment of a receiver since the Section itself brings in, the concept of 'just and convenient' while speaking of passing any interim measure of protection. The concluding words of the Section, "and the court shall have the same powr for making orders as it has for the purpose and in relation to any proceedings before it" also suggests that the normal rules that govern the Court in the grant of interim orders is not sought to be jettisoned by the provision. Moreover when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by the Act. On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under S.9 of the Act."

11. Therefore, it is evident from the decision of the Honourable Supreme Court that wherever the powers of the Court are invoked with the objective of supporting the arbitration, the Courts must act cautiously. The Court would not be justified in granting interim orders and relief merely for the asking of it. In fact, if a similar analogy is worked out in case of attachment of immovable property and seeking security under Order 38 Rule 5 of CPC, the Honourable Supreme Court as well as this Court have time and again held that the intention of the parties to deprive the other party from enforcing the decree should be manifestly clear, pleaded, proved and orders of attachment cannot be granted as a matter of routine. The same principle will also apply to the cases governing Section 9 of the Act. Here is a case where the appellant has not made out any case or produced any material to show that there is an apprehension or danger that the amount could not be recovered by them from the respondent, especially when the appellant alleged that the respondent is going to start a new company in India itself for the very same purpose. Under those circumstance, we are of the considered view that the learned Judge is right in holding that the application filed by the appellant under Section 9 of the Act was filed only with an intention to mount pressure on the respondent to settle the amount. We do not find any reason, much less justifiable reason to interfere with the order passed by the learned Judge."

22. The ratio laid down in the above cases are squarely applicable to the facts of the present cases. The applicants have only

stated that in view of the failure of the 1st respondent in securing sanctions, the parents were outraged and as a result the applicants had to face many proceedings including criminal complaints. The applicants have neither pleaded nor produced the documents to show that the respondents are about to close down and run away, which warrants interim protection, pending the arbitration proceedings.

23. In the judgment reported in 2007 (7) SCC 125, the Apex Court has held as follows:-

> "11. The power and jurisdiction of courts in arbitral matters has been the subject of much discussion. The relationship between courts and arbitral tribunals have been said to swing between forced co-habitation and true partnership. The process of arbitration is dependant on the underlying support of the courts who alone has the power to rescue the system when one party seeks to sabotage it. The position was stated by Lord Mustil in **Coppee Levalin NV** v. **Ken- Ren Fertilisers and Chemicalsb** 1994 (2) LR 109: there is plainly a tension here. On the one hand the concept of arbitration as a consensual process reinforced by the ideas of Tran nationalism leans against the involvement of the mechanisms of state through the medium of a municipal court. On the other side there is a plain fact, palatable or not, that it is only a Court possessing coercive powers which could rescue the arbitration if it is in danger of foundering.
>
> In Conservatory and Provisional Measures in International Arbitration, 9th Joint Colloquium, Lord Mustill in

"Comments and Conclusions" described the relationship further:

Ideally, the handling of arbitral disputes should resemble a relay race. In the initial stages, before the arbitrators are seized of the dispute, the baton is in the grasp of the court; for at that stage there is no other organization which could take steps to prevent the arbitration agreement from being ineffectual. When the arbitrators take charge they take over the baton and retain it until they have made an award. At this point, having no longer a function to fulfil, the arbitrators hand back the baton so that the court can in case of need lend its coercive powers to the enforcement of the award.

It is in the above background that one has to consider the power of the court approached under the Arbitration Act for interim relief or interim protection."

"18. It is true that the intention behind Section 9 of the Act is the issuance of an order for preservation of the subject matter of an arbitration agreement. According to learned Counsel for Adhunik Steels, the subject matter of the arbitration agreement in the case on hand, is the mining and lifting of ore by it from the mines leased to O.M.M. Private Limited for a period of 10 years and its attempted abrupt termination by O.M.M. Private Limited and the dispute before the arbitrator would be the effect of the agreement and the right of O.M.M. Private Limited to terminate it prematurely in the circumstances of the case. So viewed, it was open to the court to pass an order by way of an interim measure of protection that the existing arrangement under the contract should be continued pending the resolution of the dispute by the arbitrator. May be, there is some force in this submission made on behalf of the Adhunik Steels. But, at the same time, whether an interim measure permitting Adhunik Steels to carry on the mining operations, an extraordinary measure in itself in the face of the attempted termination of the contract by O.M.M. Private Limited or the termination of the contract by O.M.M. Private Limited, could be granted or not, would again lead the court to a consideration of the classical rules for the grant of such an interim measure. Whether an interim mandatory injunction could be granted directing the continuance of the working of the contract, had to be considered in the light of the well-settled principles in that behalf. Similarly, whether the attempted termination could be restrained leaving the consequences thereof vague would also be a question that might have to be considered in the context of well settled principles for the grant of an injunction. Therefore, on the whole, we feel that it would not be correct to say that the power under Section 9 of the Act is totally independent of the well known principles governing the grant of an interim injunction that generally govern the courts in this connection. So viewed, we have necessarily to see whether the High Court was justified in refusing the interim injunction on the facts and in the circumstances of the case.

"20. The question here is whether in the circumstances, an order of injunction could be granted restraining O.M.M. Private Limited from interfering with Adhunik Steels' working of the contract which O.M.M. Private Limited has sought to terminate. Whatever might be its reasons for termination, it is clear that a notice had been issued by the O.M.M. Private Limited terminating the arrangement entered into between itself and Adhunik Steels. In terms of Order XXXIX Rule 2 of the Code of Civil Procedure, an interim injunction could be granted restraining the breach of a contract and to that extent Adhunik Steels may claim that it has a prima facie case for restraining O.M.M. Private Limited from breaching the contract and from preventing it from carrying on its work in terms of the contract. It is in that context that the High Court has held that this was not a case where the damages that may be suffered by Adhunik Steels by the alleged breach of contract by O.M.M. Private Limited could not be quantified at a future point of time in terms of money. There is only a mention of the minimum quantity of ore that Adhunik Steels is to lift and there is also uncertainty about the other minerals that may be available for being lifted on the mining operations being carried on. These are impoundable to some extent but at the same time it cannot be said that at the end of it, it will not be possible to assess the compensation that might be payable to Adhunik Steels in case the claim of Adhunik Steels is upheld by the arbitrator while passing the award."

21. But, in that context, we cannot brush aside the contention of the learned Counsel for Adhunik Steels that if O.M.M. Private Limited is permitted to enter into other agreements with others for the same purpose, it would be unjust when the stand of O.M.M. Private Limited is that it was canceling the agreement mainly because it was hit by Rule 37 of the Mineral Concession Rules, 1960. Going by the stand adopted by O.M.M. Private Limited, it is clear that O.M.M. Private Limited cannot enter into a similar transaction with any other entity since that would also entail the apprehended violation of Rule 37 of the Mineral Concession Rules, 1960, as put forward by it. It therefore appears to be just and proper to direct O.M.M. Private Limited not to enter into a contract for mining and lifting of minerals with any other entity until the conclusion of the arbitral proceedings."

24. Therefore, to grant an interim relief, there must be prima facie case, balance of convenience and irreparable injury while deciding an application under Section 9. A mere statement in the affidavit is insufficient and cannot be the basis to grant interim relief. The applicants have only produced the copies of the notices. It is claimed that the A-

schools have been runing by the 1st respondent without approval, but that cannot be the basis for issuing the direction. Hence the applications seeking direction to deposit the amount due to the applicants are rejected.

25. The next question before this court is as to whether, the 1st respondent is entitled to an injunction against the applicant in A. No 2687/14 ?

26. The agreement has been terminated on 01.03.2014. The 1st respondent has contended that upon termination, the applicant cannot run the pre-school for three years as per clause 15.

27. Per contra, the learned counsel for the applicant has contended that in view of the licence, the applicant is entitled to use the mark and logo. Further the learned counsel has also relied upon the judgment in ***2011 (8) MLJ 809 (V.Krishnamoorthy and others vs. State of Tamil Nadu, represented by Secretary to Government, Department of Education, Fort St.George, Chennai-9 and others)***, wherein this Court has held as follows:

> *"36. The provisions of the Act and Rules were challenged before this Court by various managements and the Division Bench of this Court upheld the said Act, except Section 11 of the Act and*

Rules 4(4) and 4(5) of the Rules, in the decision reported in 2010 (4) CTC 353 (cited supra). In paragraph 40 of the said judgment the Division Bench held thus, "40. .... we do not find any merit in the petitions, except to the extent that Section 11 of the Act is held as ultra vires Article 14 of the Constitution of India. The power of the Committee or its members under Section 11(2) of the Act and Rules 4(4) and 4(5) of the Rules thereunder to enter the private schools or its premises or those of the management at any time for the purposes of search, inspection and seizure are held to be arbitrary and violative of Article 14 of the Constitution of India. Subject to this limited intervention, the challenge to the other provisions of the Act is repelled."

S.L.P. filed against the said Division Bench judgment in S.L.P.No.13428 of 2010 was dismissed by the Honourable Supreme Court on 7.5.2010.

37. In this case, the collection of fees by the 36 schools, the school fee is not fixed by the Fee Committee constituted by the State Government. The learned Advocate General submitted that since the 36 schools run by respondents 7 and 8 are not recognised under the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, Fee Committee has not fixed any fee to be collected from the students.

38. It is the grievance of the petitioners that exorbitant fee is being collected from the students viz., Registration fee every year, tuition fee and other fee. Since the respondents 7 and 8 are running the schools in the State of Tamil Nadu without recognition from any authority, the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules are fully applicable to the schools run by them. As the respondents 7 and 8 are running 36 schools without permission and recognition from the competent authority, they cannot contend that any fee can be fixed to the students in respect of their schools. The said stand is virtually defeating the object of the Act 22 of 2009 (Tamil Nadu Act), which was already upheld by the Supreme Court.

39. The respondents 7 and 8 though have a right to establish educational institutions under Article 19(1)(g) of the Constitution of India, the said right can be exercised subject to Acts, Rules and Regulations, which are held reasonable restrictions in terms of Article 19(6) of the Constitution of India. Even the respondents guaranteed to minorities under Article 30(1) of the Constitution of India is subject to regulatory measures and no one can claim that one has got absolute right to establish educational institutions without recognition from the competent authority.

40. In short, the contention of the respondents 7 and 8 seems to be that they will not be subjected to any law till the schools are admitting students in VI standard and above and they can collect any amount of fee as they think and no one is vested with any jurisdiction to interfere in their 36 schools which are established and is being administered from 2009 onwards. The said contention is definitely in violation of the statutory provisions stated supra and the respondents 1 to 4 who are the controlling authorities of school education in Tamil Nadu are bound to initiate action in accordance with law.

42. The contention of respondents 9 and 10 that if the schools are not permitted to run the students already admitted will be affected is not a ground to be accepted by this Court or the Department. Section 5 of the Act 35 of 2009 enables the parents to get transfer to nearby schools as a matter of right and no student shall be denied admission even during the extended period as per Section 15 of the said Act.

43. For the foregoing reasons, this Court is of the firm view that the petitioners have made out a case for taking appropriate action against 36 schools run by the respondents 7 and 8, by respondents 1 to 4. Hence, a direction is issued to the respondents 1 to 4 to initiate action against 36 schools in compliance with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules 1974 and Code of Regulations for approved Nursary and Primary Schools in Tamil Nadu notified in G.O.Ms.No.484, Education Department, dated 24.4.1991 and relevant laws within four weeks. As the petitioners are objecting the exorbitant demand of fees from their children, the respondents 7 and 8 are restrained from demanding any further fee from the petitioners till action is taken by respondents 1 to 4."

28. The learned counsel for the applicant has contended that the applicant alone has taken steps and obtained necessary approval from the authorities. The learned counsel has also contended that they are paying rent to the landlord directly. From the judgments relied upon by the counsel for the applicant it is evident that the 1st respondent had not obtained necessary permissions

and directions were issued to take action for closure. From the fact that the applicant is able to run the pre-school, it is evident that they have secured the necessary permissions.

29. Though there is prima facie case in favour of the 1st respondent, this court feels that the balance of convenience is in favour of the applicant. Also the loss would not be irreparable as the same can be determined by the Arbitrator, before whom the matter is now pending. Already, the students have been admitted and therefore, granting an injunction would jeopardise their future and any direction to accommodate in other schools cannot be given in the application under Section 9. Therefore, the interim relief of injunction is rejected. The parties are directed to proceed with the arbitration proceedings without delay taking into consideration the future of the students admitted in the pre-school of the applicant, so that the future of the students would not be jeopardised in the next academic year.

In the result, the above applications are dismissed. No costs.

rnb 27.4.2015

Index : Yes/No.

Internet :Yes/No.

R. MAHADEVAN, J.

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Pre Delivery Order in

Application No.2687 to 2689 of 2014

and

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Date :27 .4.2015