

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2015

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MRS.JUSTICE PUSHPA SATHYANARAYANA

O.S.A.No.257 of 2015
and M.P.Nos.1 and 2 of 2015

Volga Videos

Rep. by Mr.Prasad Guduru
Panjagutta, Hyderabad.

... Appellant

-vs-

1. M/s.Sun TV Network Ltd.

Rep. by its Authorised Signatory,
Mr.M.Jyothi Basu, Chennai 28.

2. M/s.SLV Cinema

Rep. by its Proprietor, Mr.Rudrapati
Ramana Rao, Hyderabad

... Respondents

Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of amended Letters Patent against the Order dated 24.11.2015 passed in O.A.No.1220 of 2015 in C.S.No.905 of 2015 on the file of original side of this Court.

For Appellant

: Mr.Umesh Raok

For Respondents

: Mr.Mr.AR.L.Sundaresan, SC
for M/s.M.Sneha for R-1

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J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The subject matter of disputes is the Assignment Agreement dated 24.02.2015 containing clause 29 as Dispute Resolution Clause, which reads as under:

'29. Dispute Resolution:

- i. Any dispute that might arise between the 'ASSIGNOR' and the 'ASSIGNEE' or any person claiming under them in relation to the schedule mentioned picture under this Agreement, interpretation of the terms and conditions therein or touching upon the performance of the obligations under this Agreement, the dispute shall be settled by adjudication through Arbitration under the provisions of the Arbitration and Conciliation Act, 1996.
- ii. The Arbitration shall be held by a sole Arbitrator to be appointed by the 'ASSIGNEE' who shall be a retired District Judge or a retired High Court Judge.
- iii. The 'ASSIGNOR' will be bound by the decision of the 'ASSIGNEE' in appointment of the Arbitrator subject to the qualification stated above.
- iv. The Sole Arbitrator shall enter upon the Reference and adjudicate the dispute between the parties and pass a reasoned award.
- v. The Arbitral award shall be final and binding on the parties.
- vi. The proceedings shall be in English and the seat of Arbitration shall be Chennai.'

2. The first respondent filed the suit and interim orders are operating in favour of the said respondent. The appellant moved an application under Section 8 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the said Act') and that application is still pending. The grievance of the appellant is that the said application should have been considered first, as if the matters have to go to arbitration, there would be no jurisdiction for the civil Court to pass interim orders and such interim orders could have been passed only on an application under Section 9 of the said Act.

3. On the last date of hearing, we put to the learned counsel for the first respondent as to why the parties should not agree to the mode of arbitration for resolution of disputes as agreed. It may be noticed that the second respondent has not put in appearance, as service has not been possible on the given address. The rights have been claimed through the second respondent. In this behalf, learned counsel for the first

respondent states that he will ensure that the second respondent is served and enters appearance before the Arbitrator.

4. In the aforesaid context, learned Senior Counsel for the first respondent, on instructions, states that the said respondent is ready for the resolution of disputes through arbitration, but, in addition, submits that the interim order operating in his favour may continue till such time, as the Arbitrator is able to apply his mind to the issue of interim relief.

5. The aforesaid course of action is acceptable to the learned counsel for the appellant.

6. In view of the aforesaid, the following agreed order is passed:

1. Learned counsel for the parties propose and agree that Mr. B. Gokuldass, a retired District Judge, will be the Sole Arbitrator to enter upon reference and adjudicate the disputes and the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre;
2. The statement of claim will be filed by the first respondent/ plaintiff within a week, as prayed for along with the application for interim relief;
3. The appellant / second defendant will file a reply / counter-claim, if any, within a week thereafter;
4. The reply to the interim relief application will be filed by the appellant / second defendant within a week's time thereafter;
5. The parties will file their respective documents in their possession along with their pleadings;
6. The question of continuing or vacating the interim relief as granted by the learned Single Judge would be considered by the learned Arbitrator uninfluenced by any observations made in the order passed by the learned Single Judge. Till such decision, the interim order would continue to operate;
7. Hearing date is fixed on 5th February, 2016 of the interim application.

8. The prayer made by the appellant in Application No.7677 of 2015 under Section 8 of the said Act stands allowed and consequently, the suit will also stand disposed of;

9. The first respondent will serve the second respondent for the date of hearing before the Arbitrator.

7. The Original Side Appeal, accordingly, stands disposed of. No costs.

sra

s/d-

Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

Note: Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii) The Arbitrator, as referred above.

To

1. The Addl. Registrar - Vigilance,
Madras High Court, Arbitration Centre,
Madras High Court Campus, Chennai.

2. Mr.B.Gokuldas (Retd. District Judge)
The Arbitrator,
No.11, Kuppusamy Street,
Jesupadam Nagar, Guduvancherry,
Chennai 603 202.

3. The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

+ 1 cc to Mr.Umesh Rao, Advocate SR 69339

+ 1 cc to Mr.M.Sneha, Advocate SR 69512

ad(co)
prk11/1

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