

A.No.2256 of 2016

RAJIV SHAKDHER, J.

1. This application has been filed seeking a direction to the respondent to furnish security for the claim of the Termination Fee aggregating to Rs.5,00,000/- (Rupees Five Lakhs only) as per Clause 27 (c) of the terms of the Letter of Understanding dated 28th March 2011 on or before a particular date to be fixed by this Court, failing which, to attach and take symbolic possession of the respondent's theatres/screens at M/s. Jaya DTS A/C Theatre, Jaya and Tamil DTS A/C Theatre Complex at No.12, New Natham Raod, Revenue Quarters Madurai-14, Tamil Nadu, morefully described the Schedule to the Judges Summons, via an Advocate Commissioner, as may be appointed by this Court pending disposal of this Application.

2. Mr.R.Sagadevan, who appears for the respondent, says that the claim is not sustainable.

2.1. It is also submitted by the learned counsel for the respondent that in any case, an Arbitrator has been appointed in the matter, and therefore, this application need not be proceeded further.

2.2. However, after some arguments, learned counsel for the respondent, says, albeit, without prejudice to the rights and contentions of his client, that the claim made by the applicant is secured, as his client does not intend to alienate or create any third party interest in the subject property, pending adjudication by the Arbitrator.

2.3. In support this submission, learned counsel for the respondent has drawn my attention to paragraphs 6 and 31 of the respondent's counter-affidavit.

3. I may only note that in the aforementioned paragraphs of the counter-affidavit, the respondent only denies the assertion of the applicant, which is that, he intends to alienate the property, adverted to in the schedule attached to the Judges summons.

3.1. In other words, there is no positive assertion by the respondent, as it has sought to be contended by his counsel that he would not alienate or create any third party interest in the subject property, during the course of the arbitration proceedings.

4. Since, the counsel for the respondent asserts before me that the respondent does not intend to alienate or create any third party interest in the subject property, I intend to take the said statement on record.

4.1. Furthermore, the respondent is directed to file an affidavit in the aforesaid terms within a period of three days of receipt of a copy of the order. The affidavit of the respondent will state that pending conclusion of the arbitration proceedings, the subject property will neither be alienated nor will any third party interest be created therein.

4.2. A copy of the affidavit will be served on the learned counsel for the applicant.

5. The application is, accordingly, disposed of.

20.09.2016

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