

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2017
DATE OF DECISION : 13.10.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

O.S.A.Nos.216 and 249 of 2017

and

C.M.P.No.14932 of 2017

O.S.A.No.216 of 2017 :

Lifestyle Equities CV
PrinsBernhardplein, 1097JB,
Amsterdam, The Netherlands,
represented by their
Power of Attorney holder,
Mr.Abhishek Kotnala .. Appellant

Vs.

1.QDSeatoman Designs Pvt. Ltd.,
5th Floor, Status Quo,
38 Sterling Road,
Nungambakkam, Chennai-600 034.
represented by their Director.

2.Quintessential Designs India Pvt. Ltd.,
5th Floor, Status Quo,
38 Sterling Road,
Nungambakkam, Chennai-600 034.
represented by their Director.

3.Quintessential Designs India Pvt. Ltd.
-Apparel Ventures,
5th Floor, Status Quo,
38 Sterling Road,
Nungambakkam, Chennai-600 034.
represented by their Director.

.. Respondents

O.S.A.No.249 of 2017 :

1.QDSeatoman Designs Pvt. Ltd.,
5th Floor, Status Quo,
38 Sterling Road,
Nungambakkam, Chennai-600 034.
represented by its Director

2.Quintessential Designs India Pvt. Ltd.,
5th Floor, Status Quo,
38 Sterling Road,
Nungambakkam, Chennai-600 034.
represented by its CEO Mr.Syed Layak Ali.

3.Quintessential Designs India Pvt. Ltd.
-Apparel Ventures,
5th Floor, Status Quo,
38 Sterling Road,
Nungambakkam, Chennai-600 034.
represented by its
CEO Mr.Syed Layak Ali.

.. Appellants

Vs.

Lifestyle Equities CV
PrinsBernhardplein, 1097JB,
Amsterdam, The Netherlands,
represented by their
Power of Attorney holder,
Mr.Abhishek Kotnala

.. Respondent

O.S.A.No.216 of 2017 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent read with Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 11.8.2017 made in O.A.No.515 of 2017.

O.S.A.No.249 of 2017 has been filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent read with Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 11.8.2017 made in A.No.3176 of 2017 in O.A.No.515 of 2017.

Prayer in A.3176/2017 in O.A.515/17:

Applicatin to vacating the exparte order of interim injunction granted vide order dated 12.5.2017 passed in O.A.515/17 on the file of this Hon'ble Court.

For Appellant : Mr.Sai Deepak
for Mr.Thriyambak J.Kannan,
Mr. Mohit Goel*
in O.S.A.No.216 of 2017

Mr.P.H.Arvind Pandian, SC
for Mr.M.S.Bharath
in O.S.A.No.249 of 2017

For Respondents: Mr.P.H.Arvind Pandian, SC
for Mr.M.S.Bharath
in O.S.A.No.216 of 2016
Mr.Sai Deepak
for Mr.Thriyambak J.Kannan
Mr. Mohit Goel*
in O.S.A.No.249 of 2017

COMMON JUDGMENT

M.SUNDAR, J.

Adversaries are appellants before us in these two intra-court appeals. Adversaries before the learned Single Judge have one common plea before us. That common plea made in unison is, they are aggrieved by the order of the learned Single Judge. In other words, while one intra-court appeal being O.S.A.No.216 of 2017 has been filed by the applicant (in O.A.Nos.515 to 517 of 2017) before the learned Single Judge, the other intra-court appeal being O.S.A.No.249 of 2017 has been filed by three respondents (in O.A.Nos.515 to 517 of 2017) before the learned Single Judge. We propose to dispose of both these intra-court appeals by this common order.

2 Though the matter came up for admission, as respondents in O.S.A.No.216 of 2017, who are appellants in O.S.A.No.249 of 2017 were on caveat, by consent of both parties, the main appeals were heard out.

3 To be noted, the order of the learned Single Judge was made in exercise of powers under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A and C Act' for brevity). Though many submissions were made on facts and on merits of the matter by rival litigants at lis, a thumbnail sketch of facts, which according to us, is imperative and essential for appreciating and understanding this judgment, are set out infra under the caption 'Facts in a nutshell'.

FACTS IN A NUTSHELL :

4(a) Lifestyle Equities CV is a Dutch limited partnership with address at Prins Bernharplein 200, 1097 J.B., Amsterdam, Netherlands and is hereinafter referred to as 'Lifestyle' for the sake of brevity.

4(b) QDSeatoman Designs Pvt. Ltd., Quintessential Designs India Pvt. Ltd., and Quintessential designs India Pvt. Ltd. - Apparel Ventures, all having address at 5th Floor, Status Quo, 38 Sterling Road, Nungambakkam, Chennai-600 034 are hereinafter collectively referred to as 'QDS' for brevity, clarity and convenience. Wherever it is necessary to refer to each one of these three entities individually, full name of the entity, i.e., the name of the company, is being given.

4(c) Lifestyle is the applicant before the learned Single Judge, having filed an application under Section 9 of the A and C Act and QDS are three respondents before the learned Single Judge. The fulcrum of the case is an agreement dated 30.6.2014 (hereinafter referred to as the 'said agreement' for brevity) between QDSeatoman Designs Pvt. Ltd and Lifestyle. It is not in dispute before us that though QDSeatoman Designs

Pvt. Ltd., alone is the contracting party to the said agreement, QDS (all three entities) are bound by the said agreement.

4(d) We are also informed that the line of activity, i.e., business of both Lifestyle and QDS is apparels and garments to put it in simple terms. To be noted, the said agreement is for a period of three years beginning August 1, 2014 and ending July 31, 2017 with a provision for renewal by mutual consent. However, before the expiry of the full three years period, this litigation broke out between Lifestyle and QDS in May, 2017.

4(e) The most important aspect to be noted is, both parties, i.e., Lifestyle and QDS state that though the said agreement is dated 30.6.2014, it was entered into / executed only in 2016. This has been specifically articulated by QDS in its application before the learned Single Judge being A.No.3176 of 2017 (vacate injunction application and more particularly in the affidavit dated 15.6.2017 filed in support of the said vacate injunction application). In paragraph 8 of the said affidavit, it has been averred by QDS that the said agreement, i.e., agreement dated 30.6.2014, was signed only in the year 2016. It is not disputed by Lifestyle before us.

4(f) Therefore, a business arrangement that was operating between Lifestyle and QDS from August 2014 was reduced to writing and codified by drawing up specific covenants in 2016 for a period of three years from August 2014 to July 2017. In addition to the above, it is also not in dispute between the parties before us that the commencement of business relationship between Lifestyle and QDS is not just from 2014, but from 2008.

4(g) From a perusal of the said agreement, it emerges that Lifestyle is the absolute owner of the trademark "Beverly Hills Polo Club" ('BHPC' for brevity). It has been covenanted in the said agreement that QDS shall organize, hire and support the brand BHPC of Lifestyle. It has also been covenanted in the said agreement that Lifestyle shall pay monthly retainer of 15,000 US Dollars to QDS for its services. We are informed that this was subsequently increased to 21,000 US Dollars from 2016 and further increased to Rs.21,500 US Dollars from 2017.

4(h) Considering that this narrative is facts in a nutshell, suffice to say that disputes arose between Lifestyle and QDS in their aforesaid business relationship. This resulted in Lifestyle filing three applications before a learned Single Judge of this Court, being O.A.Nos.515 to 517 of 2017 with certain interim prayers. All three applications were filed under Section 9 of A and C Act. On 12.5.2017, a learned Single Judge of this Court granted an interim order in O.A.No.515 of 2017. After filing Section 9 applications and

after grant of interim order by this court on 12.5.2017, we are informed that Lifestyle issued a notice dated 13.6.2017 invoking the arbitration clause in the said agreement, inter-alia claiming 6 Million US Dollars. It is not in dispute that QDS received this notice dated 13.6.2017 invoking arbitration clause. Therefore, in the instant case, as of today arbitration has commenced within the meaning of Section 21 of A and C Act. To be noted, we are also informed that this notice invoking the arbitration clause was followed by a nomination letter dated 5.7.2017 by Lifestyle.

4(i) It is also not in dispute that QDS did not send reply to the aforesaid notice invoking arbitration clause. However, QDS filed an application being A.No.3176 of 2017 for vacating the aforesaid interim injunction granted on 12.5.2017 by a learned Single Judge of this Court. Judges summons of this vacate injunction application is dated 16.6.2017.

4(j) In the interregnum, Lifestyle has filed a petition for appointment of an Arbitrator in the Hon'ble Supreme Court of India, as this is an international commercial arbitration within the meaning of Section 2(1)(f) of A and C Act. This application by Lifestyle in the Supreme Court of India under Section 11 of A and C Act for appointment of an arbitrator has been taken on file as Application No.35 of 2017. It is also not in dispute that QDS is yet to enter appearance in the same.

4(k) Be that as it may, the aforesaid injunction applications (O.A.Nos.515 to 517 of 2017) together with vacate injunction application, i.e., A.No.3176 of 2017 and another application being A.No.4263 of 2017 were taken out by QDS with a rather peculiar prayer, i.e., Court's permission to pursue statutory remedies by way of a suit and both the applications came to be disposed of by a learned Single Judge on the original side of this Court in and by a common order dated 11.8.2017.

4(l) Though five applications were disposed of by one common order by the learned Single Judge on the Original Side of this Court as aforesaid, Lifestyle has filed O.S.A.No.216 of 2017 against the order in injunction application being O.A.No.515 of 2017 and QDS have filed O.S.A.No.249 of 2017 against the order in vacate injunction application being A.No.3176 of 2017 in O.A.No.515 of 2017.

4(m) To be noted, learned Single Judge closed all five applications, inter-alia with a direction to Lifestyle to deposit Rs.1 Crore and to maintain accounts of profits and deposit the entire sale proceeds of collection qua Fall 2017 in an escrow account. We shall now proceed to examine the matter in the light of the submissions made before us.

DISCUSSION :

5(a) Detailed submissions touching upon facts were made before us. We do not intend examining those facts in great detail as these are intra court appeals under Section 37 of the A and C Act and have arisen out of proceedings under Section 9 of A and C Act.

5(b) From the covenants in the said agreement, it is clear that Lifestyle has engaged the services of QDS on a monthly retainer for maintaining certain select defined creative services such as product translation, technical design and production administration together with other relevant supporting creative services. It is also not in dispute before us that there is a dispute resolution clause in the said agreement and the same is clause 40 of the said agreement.

5(c) We deem it appropriate to extract clause 40 of the said agreement, which reads as follows :

"40. Any dispute arising out of or in connection with this Agreement, shall first be resolved mutually by the Parties through negotiations. If the Parties are not able to settle the same through negotiations, each party may appoint an arbitrator and such appointed arbitrators shall appoint a third arbitrator for arbitration. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The place of arbitration shall be Chennai, India and the language of arbitration shall be in English."

5(d) If the said agreement is the fulcrum of the case, exit of one Laura Wilson, a specialized Designer from Lifestyle, is admittedly the genesis of the lis. That Laura Wilson is a specialized designer, that she was working with Lifestyle and that she was stationed in QDS, Chennai for the purpose of effectively operating the said agreement are facts that are not in dispute.

5(e) It is also not in dispute that Laura Wilson left / quit Lifestyle and obviously the office of QDS in Chennai, where she was stationed, in 2015, but both parties are unable to give the exact month. To be noted, even in the written submission, in one/same breath, Lifestyle has stated that she quit in May, 2015 and early 2015. Be that as it may, the fact that Laura Wilson quit in the first half of 2015 is not in dispute. To simplify and encapsulate the issue, the case of QDS is that the exit of Laura Wilson from Lifestyle resulted in QDS providing certain additional services in addition to services adumbrated in the said agreement and it is the further case of QDS that such services are outside the said agreement. This is strongly disputed by Lifestyle. This assertion and denial, in our understanding, is the crux and gravamen of the lis between the parties.

5(f) We have set out the crux and gravamen of this lis / essential facts supra. In law, broadly speaking the contentions of Lifestyle can be summarised as follows :

(a) Directions against Lifestyle, directing Lifestyle to deposit Rs.1 Crore, to maintain accounts of profits and to deposit all proceeds of collection relating to Fall 2017 in an escrow account, etc., ought not to have been given by the learned Single Judge when there was no Section 9 application by QDS.

(b) On a demurrer, directions are in the nature of securing the claim which are governed by principles of Order XXXVIII Rule 5 of Code of Civil Procedure, 1908 ('CPC' for brevity) and therefore, in the complete absence of averments touching upon the ingredients of Order XXXVIII Rule 5 CPC (even in vacate injunction application), learned Single Judge erred in giving directions qua security.

(c) Finding of facts / views on merit overlapping with final relief, which are sought to be adjudicated in the arbitral proceedings before the Arbitral Tribunal ought not to have been given in an order in section 9 applications.

5(g) On the contrary, legal submissions on the part of QDS can be summarized as follows :

(a) application under Section 9 of A and C Act is not maintainable as the disputes that have now arisen between the parties are not arbitrable.

(b) As a corollary, it is the submission of QDS that issues pertaining to Intellectual Property Rights ('IPR' for brevity) are in the realm of rights in rem and therefore, are not arbitral.

5(h) We now proceed to discuss and examine the matter further.

5(i) As we proceed to discuss the matter further, it becomes necessary to encapsulate and capture the case laws that were pressed into service by both sides.

5(j) To buttress the legal submission that directions for deposit of Rs.1 Crore and to deposit the money into escrow account, etc., ought not to have been given in an application by Lifestyle, where QDS is only respondents (particularly when QDS have not moved a separate Section 9 application) and that too when none of the ingredients / parameters / determinants of the principle of Order XXXVIII Rule 5 CPC have been pleaded even in the vacate injunction application, Lifestyle pressed into service the following four judgments.

(i) Premraj Mundra Vs. Md. Maneck Gazi [AIR 1951 Cal 156] decided on 29.01.1951,

(ii) A-1 Biz Solutions Chennai Vs. Cascade Billing Center Incorporated [(2011) SCC Online Mad 924] decided on 27.7.2011,

(iii) C.S.S. Corp. Private Limited Vs. Space Matrix Design Consultants Private Limited [2012 (1) CTC 225] decided on 13.12.2011,

(iv) Cholamandalam Investment and Finance Co. Ltd. Vs. Philomina George, O.S.A.No.195 of 2011, decided on 17.3.2014.

5(k) To buttress the proposition that finding of facts / views on merit overlapping with final reliefs, which are sought to be adjudicated in the arbitral proceedings before the Arbitral Tribunal ought not to have been given in section 9 application, M/s.Niko Resources Ltd. Vs. Union of India and others [93 (2001) DLT 12] case decided on 01.06.2001 was pressed into service.

5(l) To buttress the submission that lis / disputes that have arisen between the parties are arbitrable in the light of wide amplitude and broad scope of arbitration clause, i.e. Clause 40, wherein the expression 'arising out of or in connection with' has been used, Renusagar Power Co. Ltd. Vs. General Electric Company [(1984) 4 SCC 679] decided on 16.8.1984 and Govind Prasad Sharma Vs. Doon Valley Officers Cooperative Housing Society Ltd. [2017 SCC online SC 1001] decided on 23.08.2017 were pressed into service.

5(m) On the side of QDS, to buttress its submission that IPR rights being in the realm of rights in rem are not arbitrable by way of private arbitration agreement between two parties, two judgments, i.e., Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited and others [(2011) 5 SCC 532 = AIR 2011 SC 2507] decided on 15.4.2011 and A.Ayyasamy Vs. A.Paramasivam and others [(2016) 10 SCC 386] decided on 4.10.2016 were pressed into service. In this regard, a decision of a Division Bench of our High Court being R.K. Productions Pvt. Ltd. Vs. M/s.N.K.Theatres Pvt. Ltd. reported in 2013-1-LW 485 and decided on 11.12.2012 wherein Booz Allen case was followed was also pressed into service. Dovetailed with these submissions, it was submitted that a plaintiff cannot be called upon to bifurcate the disputes and in support of this, a judgment of the Supreme Court in Sukanya Holdings (P) Ltd. Vs. Jayesh H.Pandya and another [(2003) 5 SCC 531], decided on 14.4.2003 and an unreported judgment of the Bombay High Court dated 21.11.2014 in Steel Authority of India Ltd. Vs. SKS Ispat and Power Ltd. and 2 others, in which Sukanya Holdings (P) Ltd.'s case was followed, were pressed into service.

5(n) Another judgment of a learned Single Judge of Bombay High Court dated 31.8.2006 made in Arbitration Petition No.341 of 2012 being The Indian Performing Right Society Ltd. Vs. Entertainment Network (India) Ltd., wherein Booz Allen case

was followed and a judgment of Delhi High Court dated 11.9.1990 in Mundipharma AG Vs. Wockhardt Ltd. [ILR (1991) 1 Delhi 606] and a judgment dated 1.5.1996 of Hon'ble Supreme Court of India in Vikas Sales Corporation and another Vs. Commissioner of Commercial Taxes and another [(1996) 4 SCC 433] were also pressed into service.

5(o) In sum and substance. All the aforesaid authorities were pressed into service by QDS to say that IPR disputes are not arbitrable and that plaintiff cannot be called upon to bifurcate the disputes.

5(p) We now deal with the first aspect of the matter, i.e., as to whether IPR disputes are arbitrable. This takes us to the question as to whether it is in the realm of a right in rem and therefore, not arbitrable. In this context, a clear distinction has been made inter-alia in the line of authorities referred to supra between a right in rem and an action in personam. A judgment in personam refers to a judgment against a person as distinguishable from a judgment against a thing, right or status. A judgment in rem refers to a judgment against a thing, right or status or condition of property which operates directly on the property itself. To make this illustrative, it can be said that a patent license issue may be arbitrable, but validity of the underlying patent may not be arbitrable. This has been alluded to by the Hon'ble Supreme Court of India in Booz Allen supra and the learned Single Judge has also noted this aspect of the matter as is evident from a reading of the order which has been called in question before us.

5(q) We are aware that after Booz Allen and Ayyasamy supra, there is one more judgment of the Supreme Court, which dealt with the question as to whether there can be an arbitration clause in a trust deed and as to whether a dispute pertaining to a trust or as amongst trustees of a public trust is arbitrable and the same was answered in the negative. This judgment is Vimal Kishor Shah Vs. Jayesh Dinesh Shah [(2016) 8 SCC 788] decided on 17.8.2016.

5(r) While Booz Allen dealt with disputes relating to rights in rem qua arbitration / arbitrability, Ayyasamy dealt with fraud qua arbitration / arbitrability. The third judgment dealt with a dispute touching upon a trust qua arbitration / arbitrability. Though the last of the three judgments, i.e., Vimal Kishor Shah was not cited before us, the same stand noticed by us.

5(s) Pivotal submission of Lifestyle on this aspect of the matter is that the aforesaid judgment of the Hon'ble Supreme Court of India has not considered or excluded IPR disputes from the scope of arbitrability. For absolute clarity on this aspect of the matter, learned counsel for Lifestyle referred to paragraph 14 of Ayyasamy case and said that the

list of disputes which may not be arbitrable as adumbrated therein is not the ratio or conclusion of the Hon'ble Supreme Court of India, but a mere extract from a book titled 'The Law and Practice of Arbitration and Conciliation'. A perusal of paragraph 14 affirms this position and very fairly, learned Senior Counsel for QDS does not dispute this.

5(t) We also notice that the learned Single Judge has dealt with the rival submissions on this aspect of the matter and summarized the findings returned by the Court. Learned Single Judge has held that there is no quarrel with the proposition that the grant of registration of a copyright or design under the relevant statutes can be achieved through / only by statutory authorities constituted under the respective statutes. Learned Single Judge has gone on to hold in the present case that both parties are in reality claiming a better right of usage vis-a-vis the other and that this would clearly bring the facts of the present case within the realm of a right in personam rather than a right in rem. On this aspect of the matter, we have no difficulty in sustaining the finding returned and opinion of the learned Single Judge. At the risk of repetition, while a patent right may be arbitrable, the very validity of the underlying patent is not arbitrable. This has been articulated in Mustill and Boyd in their '2001 Companion Volume to the 2nd Edn. of Commercial Arbitration'. This has also been extracted by the Hon'ble Supreme Court of India in Booz Allen's case and the learned Single Judge has noticed this. Therefore, to this extent, there is no difficulty in agreeing with the learned Single Judge and holding that the disputes in the instant case as between Lifestyle and QDS are arbitrable.

5(u) Having said that, what we would like to add is that it will still be open for the Arbitral Tribunal to rule on this issue by exercising its power under Section 16 of A and C Act. Therefore, we make it clear that this view expressed herein is only a prima facie view, for the limited purpose of deciding interim measures under Section 9 of A and C Act. Therefore, we leave this issue open to be agitated before the Arbitral Tribunal inter-alia under section 16 of A and C Act. When we say this, it is our considered view and opinion after taking into consideration the admitted factual position that Lifestyle issued a notice dated 13.6.2017 followed by a nomination letter dated 5.7.2017 invoking / triggering the arbitration clause and claiming 6 Million US Dollars. Admittedly / concededly, learned Senior Counsel for QDS fairly submitted that QDS has not sent a reply or response to this. Further more, as it is an international commercial arbitration within the meaning of Section 2(1)(f) of A and C Act, Lifestyle has also filed an arbitration application being Arbitration Application No.35/2017 in the Hon'ble Supreme Court of India.

5(v) Therefore, the above answers the plea of QDS that disputes that have arisen between parties are not arbitrable, axiomatic to which, it was submitted that Section 9 application is not maintainable. In other words, our finding is that the disputes that have arisen between the parties are arbitrable subject of course to the Arbitral Tribunal to be constituted by the Hon'ble Supreme Court of India ruling on its own jurisdiction inter-alia under Section 16 of A and C Act. To be noted, at the risk of repetition, QDS has not sent a reply to the notice dated 13.6.2017 followed by a nomination letter dated 5.7.2017 invoking arbitration proceedings.

5(w) This takes us to the next aspect of the matter, wherein Lifestyle submits that it is prejudiced by the impugned order as certain findings on merits have been returned. A particular reference has been made to the finding on merit about whether the said agreement covers both creative design and technical design. In other words, Lifestyle contends before us that it should have been left open for the Arbitral Tribunal to decide whether the scope of the said agreement covers both creative design and technical design or only the technical design.

5(x) It is to be noted that the learned Single Judge has clearly held in paragraph 51 of the impugned order that allegations and counter allegations have been made and therefore, the court refrains from addressing the same since it is a matter of evidence to be gone into and decided by the Arbitrator in the course of proceedings before him. Equally, there is no difficulty in accepting the proposition that in a section 9 proceedings, the court will not return any finding which would have the effect of swaying the decision of Arbitral Tribunal on the issue. Therefore, we vacate the finding on fact qua the said agreement returned by the learned Single Judge in paragraph 50 of the impugned order. In other words, paragraph 50 of the impugned order is vacated by us. For the purpose of absolute clarity, we extract paragraph 50 of the impugned order of learned Single Judge and the same reads as follows :

"50.I thus hold that the scope of services as enumerated in the agreement dated 30.06.2014 is restricted only to preparation of the technical designs which are blue prints for detailing the specifications for converting the creative design into a marketable product. This issue is held in favour of QDS."

5(y) This takes us to the last aspect of the matter as to whether directions to give security, i.e., to deposit Rs.1 Crore, maintain accounts of profits and deposit the entire proceeds of business of Fall 2017 Collection (to be precise) in an escrow account can be given when there is no section 9 application at all that has been filed by QDS.

5(z) As would be evident from the narration of facts and discussion thus far in this judgment, QDS has taken the stand that all applications filed by Lifestyle under Section 9 are not maintainable as the disputes that have arisen between the parties, according to QDS, are not arbitrable. Therefore, it may be unfair to put it against QDS and say that QDS has not filed section 9 application, but what is to be noted is even in the vacate injunction application being A.No.3176 of 2015 (in the affidavit dated 15.6.2017 filed by QDS in support of the vacate injunction application), there are no averments touching upon the ingredients / determinants / parameters / underlying principles of Order XXXVIII Rule 5 CPC. More over, when a party to a lis takes a stand that section 9 is inapplicable to the disputes that have arisen between the parties, that party cannot be given relief in a section 9 application more so in a section 9 application filed by its adversary. Beneath and beyond all this is a basic proposition that the relief cannot be granted to a party under section 9 when no application under section 9 of A and C Act has been moved. Therefore, the three directions given by the learned Single Judge as adumbrated / articulated in paragraph 53 of the impugned judgment are set aside.

5(aa) For the purpose of convenience and clarity, we extract paragraph 53 of the judgment of learned Single Judge, which reads as follows :

"53. In the interregnum, I issue the following directions for protection of the subject matter of the proposed arbitration and in the interests of both parties:

(i) Lifestyle shall deposit a sum of Rs.1 crore to the credit of this Original Application in an interest bearing account in any Nationalised Bank, the disbursal of which will depend on the outcome of the arbitration relating to the claims of the parties;

(ii) Upon complying with the condition in (i) above, Lifestyle shall proceed with the launch of the Fall 2017 Collection in order to ensure that the slim window available for the fashion season is not lost. However, separate accounts of the business relating to Fall 2017 shall be maintained and the proceeds deposited in an escrow account pending proceedings for arbitration.

(iii) Parties are at liberty to approach the Arbitral Tribunal, once constituted for interim direction, in terms of Section 17 of the Act and in accordance with law."

5(ab) On the aforesaid aspect of the matter, we have also noticed the submission made by Mr.P.H.Arvind Pandian, learned Senior Counsel for QDS that they did not want the benefit of directions given by learned Single Judge as

contained in paragraph 53 of the impugned order. Therefore, we also record that QDS as per its stated position before us cannot be aggrieved by way of setting aside the directions contained in paragraph 53 of the impugned order.

5(ac) There are two other aspects of the matter, which have been brought to our notice. One aspect is, post impugned order on 11.8.2017 and also post filing of the first of the intra-court appeals herein, i.e., O.S.A.No.216 of 2017 by Lifestyle on 24.08.2017, QDS has filed a suit on the Original Side of this Court being C.S.No.678 of 2017 alleging violation of its copyright and claiming injunctive reliefs as well as damages.

5(ad) The second aspect that has been brought to our notice is that Lifestyle, without prejudice to its rights and contentions in its intra-court appeal before us, has deposited Rs.1 Crore by way of a demand draft dated 8.9.2017 under a memo dated 11.9.2017. It was also contended by learned Senior counsel for QDS that this has rendered the intra-court appeal of Lifestyle infructuous. We do not think so.

5(ae) The reasons are twofold. One is that there is no interim order in favour of Lifestyle in its appeal, though an application praying for an interim order has been moved. The second reason is that a perusal of the memo shows that deposit has been made strictly without prejudice to the rights and contentions of Lifestyle in the instant intra-court appeal. In the absence of an interim order from this court, Lifestyle was under peril of contempt.

5(af) To be noted, as already mentioned supra, several submissions on merits and detailed facts were made before us. In the light of the view which we are taking and the principles on which we are disposing of both these intra-court appeals under Section 37 of A and C Act, we are not alluding to the same, leaving it to the Arbitral Tribunal (to be constituted) to examine all those aspects. In other words, though obvious, we leave all questions on merits open. Further, though obvious, we make it clear that it is open to the parties to move the Arbitral Tribunal (to be constituted) for any relief under Section 17 of A and C Act notwithstanding the fact that there may be certain overlapping area.

5(ag) We have enlisted the case laws pressed into service by both sides, supra in this judgment, but we have dealt with only those which are germane to the scope of this judgment.

CONCLUSION :

6(a) Owing to all that we have stated supra with regard to the impugned order of the learned Single Judge, what we do in these intra-court appeal can be summarized as follows:

(a) Finding of the learned Single Judge that the disputes that have arisen between the parties are arbitrable is sustained by clarifying that these are only prima facie views and that it is subject to final decision by Arbitral Tribunal (to be constituted) inter-alia by exercise of power under Section 16 of A and C Act;

(b) Findings of facts returned by learned Single Judge as adumbrated in paragraph 50 of the impugned order are vacated;

(c) Directions given by learned Single Judge in the nature of directions to secure the claim as adumbrated and articulated in paragraph 53 of the impugned order are set aside.

6(b) In the normal course, the above three conclusions would amount to a decision that one appeal being O.S.A.No.216 of 2017 filed by Lifestyle is partly allowed, but in the peculiar facts and circumstances of the case and in the light of the peculiar plea of Lifestyle before us that they accept the order of learned Single Judge upto paragraph 37, we have to necessarily say that the appeal of Lifestyle is allowed and consequently, the appeal of QDS is dismissed.

6(c) To be noted, as set out supra in this judgment, both intra-court appeals are directed against O.A.No.515 of 2017 and A.No.3176 of 2017, though five applications in all have been disposed of by a common order. Though obvious, we make it clear that this judgment of ours will govern the fate of the other applications too.

DECISION :

7(a) O.S.A.No.216 of 2017 filed by Lifestyle is allowed. O.S.A.No.249 of 2017 filed by QDS is dismissed as bereft of merits.

7(b) Considering the nature of the matter and the trajectory the litigation has taken and also bearing in mind the fact that the appeals were heard out in full at the admission stage itself as QDS was in caveat, we make no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)
dt. 23.10.2017

Corrected as per letter dated
03/11/2017

Sd/-

Sub. Assistant Registrar (CO)
dt. 28.11.2017

//True Copy//

Sub Assistant Registrar

vvk

TO

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

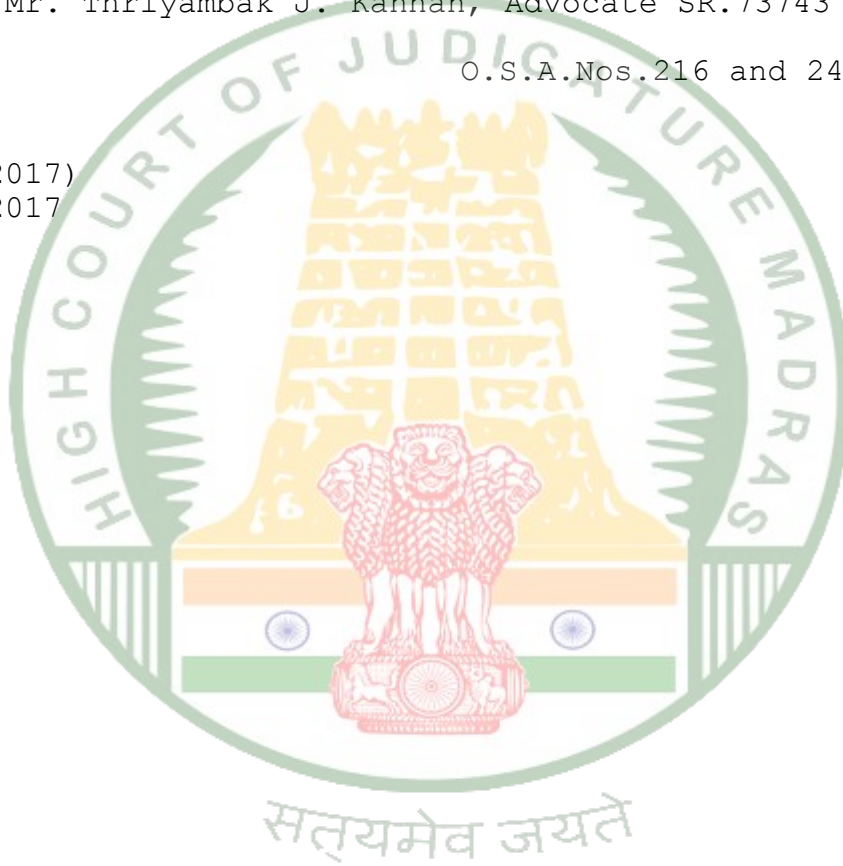
To be substituted to the
order already despatched
on 24.11.2017

+ 3 ccs to Mr. M.S. Bharath, Advocate SR.74537

+ 1 cc to Mr. Thriyambak J. Kannan, Advocate SR.73743

O.S.A.Nos.216 and 249 of 2017

RSY(CO)
EU(29/11/2017)
EU 29.11.2017



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