

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 04TH DAY OF JULY 2018

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.A. Nos.319 & 410 of 2018

and

A. Nos.2913, 3721 & 3998 of 2018

O.A. No.319 & A.No.2913 of 2018:-

In the matter of Arbitration
and Conciliation Act, 1996

and

In the matter of Arbitration
disputes between M/s.Orien-
tal Cuisines Pvt. Ltd., and
S Foods over Agreement dated
03.03.2016

M/s.Oriental Cuisines Pvt. Ltd.,
rep. by its Authorised Signatory
Mr.Ramanarayanan,
having its office at
No.74, Cathedral Road,
Chennai-600 086.

... Applicant

-Versus-

S Foods,
rep. by its Proprietor,
Mr.S.Senthooor,
having its registered office at
No.110, Rayar Garden, Sriramapuram,
Srirangam, Trichy-620 006.

... Respondent

O.A. No.319 of 2018:-

Original Application praying that this Hon'ble Court
be pleased to grant an order of interim injunction
restraining the respondent their agents, nominees,
assignees or anyone claiming through them to continue to
run the Restaurant, viz., 'FLAVOURS' at No.1, Lawsons Road,

Cantonment Trichy, Trichy-620 006, pending arbitration.

A. No.2913 of 2018:-

Application praying that this Hon'ble Court be pleased to direct the respondent to furnish bank guarantee for a sum of Rs.91,81,667/- before this Hon'ble Court.

O.A. No.410 and A. No.3721 of 2018:-

In the matter of Arbitration and Conciliation Act, 1996 and

In the matter of Arbitration disputes between M/s.Oriental Cuisines Pvt. Ltd., and (1) K.Shivashankar and (2) R.Nandakumar over Agreement dated 21.03.2016

M/s.Oriental Cuisines Pvt. Ltd.,
rep. by its Authorised Signatory
Mr.Ramanarayanan,
having its office at
No.74, Cathedral Road,
Chennai-600 086.

... Applicant

-Versus-

1. K.Shivashankar,
S/o.A.Kumaraswamy,
residing at No.6/25,
Cenotaph Road, 1st Street,
Teynampet, Chennai-600 018.

2. R.Nandakumar,
S/o.Late M.Ramaswamy,
residing at No.36, Old No.25,
ABM Avenue, Boat Club,
A Puram, Chennai-600 028.

... Respondents

O.A. No.410 of 2018:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondent their agents, nominees,

assignees or anyone claiming through them to continue to run the Restaurant, viz., 'FLAVOURS' at No.1, Lawsons Road, Cantonment Trichy, Trichy-620 006, pending arbitration.

A. No.3721 of 2018:-

Application praying that this Hon'ble Court be pleased to direct the respondents to furnish bank guarantee for a sum of Rs.14,00,000/- (Rupees fourteen lakhs only) along with interest @ 18% per annum, pending arbitration proceedings.

A. No.3998 of 2018:-

1. K.Shivashankar,
S/o.A.Kumaraswamy,
residing at No.6/25,
Cenotaph Road, 1st Street,
Teynampet, Chennai-600 018.
2. R.Nandakumar,
S/o.Late M.Ramaswamy,
residing at No.36, Old No.25,
ABM Avenue, Boat Club,
R A Puram, Chennai-600 028. Applicants/Respondents

-Versus-

M/s.Oriental Cuisines Pvt. Ltd.,
rep. by its Authorised Signatory
Mr.Ramanarayanan,
having its office at
No.74, Cathedral Road,
Chennai-600 086. Respondent/Applicant

Application praying that this Hon'ble Court be pleased to pass an order of vacating the order of interim injunction dated 25.04.2018, granted in O.A. No.410 of 2018.

These applications coming on this day before this Court for hearing the court made the following order:-

Oriental Cuisines Private Limited (OCPL) preferred Original Application No.319 of 2018 seeking an order of interim injunction restraining S Foods - the respondent to continue to run the restaurant, viz., "FLAVOURS" at No.1, Lawsons Road, Cantonment Trichy, Trichy - 620 006, pending arbitration. OCPL also filed A.No.2913 seeking to direct the said respondent to furnish Bank Guarantee for a sum of Rs.91,81,667/-.

2. OCPL has preferred Original Application No.410 of 2018 praying similar order of interim injunction against the respondents therein, which was granted till 07.06.2018. Seeking the vacate the said interim order, the respondents in O.A.No.410 of 2018 preferred A.No.3998 of 2018.

3. A.No.3721 of 2018 was preferred by OCPL seeking a direction to the respondents to furnish Bank Guarantee for a sum of Rs.14,00,000/- along with interest at the rate of 18% p.a. Pending arbitration proceedings.

4. The claim of the OCPL is as follows :

(i) OCPL has been involved in the business of operating restaurants under various brands serving western, continental, Chinese, Pan Asian and south Indian cuisines under the Trademark "WANGS KITCHEN". One Senthoor, Proprietor of S Foods, approached OCPL and requested to operate a restaurant with the Trademark "WANGS KITCHEN" at Trichy.

(ii) Based on the understanding reached between them, they entered into an Operating and Management Agreement dated 03.03.2016 (hereafter referred to as "the Agreement"). Though the term of the Agreement was fixed from 20.01.2016 to 19.01.2025, the operation of the business was commenced only from January 2017.

(iii) The Agreement, *inter alia*, stipulated that S Foods should bear the financial responsibility and maintain confidentiality in respect of the products and allied works. Among other clauses, clause 7 of the Agreement mandates that if the Agreement is terminated, the S Foods shall not directly or indirectly by himself or through organizations commence or pursue any similar business for five years from the date of termination and breach of the said clause will confer right on the OCPL to initiate appropriate judicial proceedings. Clause 8.1 of the

Agreement states that there will be a lock-in period of two years, i.e., S Foods cannot terminate the Agreement for the first two years from the date of commencement of the outlet and breach of this clause will have to be compensated by S Foods at the given rate, apart from giving up the deposits made by them. OCPL has a lien on the products and display counters and other assets, if there is a failure to clear the dues, in addition to compensation and liquidated damages clauses.

(iv) Pursuant to the Agreement, OCPL entered into a lease agreement dated 21.03.2016, with the respondents in O.A.No.410 of 2018, who are the building owners of the restaurant premises, for a period of nine years. OCPL has paid an interest free refundable security deposit to the respondents, in addition to the agreement to pay rent at the fixed rates for a fixed duration. As per Clause 10(6) of the Lease Agreement, the respondents agreed that there would not be any omission, which would adversely affect the OCPL's right. Clause 10.7 states that the respondents shall not cause any interruption or inconvenience to the business of OCPL and also would not let/lease any part of the demised premises to any other similar business. As per Clause 15 of the Lease Agreement, the respondents are

barred from terminating the lease during the term.

(v) While so, OCPL claimed that the S Foods failed to pay the management fee, which includes salary, packing charges, rent reimbursement, travel reimbursement, staff reimbursement, pace charges, ATL, franchisee fees to the tune of Rs.20,81,667/-, including interest from January 2017 to October 2017. On the other hand, the S Foods utilized the said funds for its own purposes. An e-mail was sent by OCPL on 14.10.2017 in this regard, which yielded no response.

(vi) It is stated by OCPL that the S Foods, colluding with the building owners (the respondents in O.A.No.410 of 2018), opened a restaurant under the name and style of "FLAVOURS" in December 2017 in violation of the Agreement. Hence, OCPL claimed a sum of Rs.91,81,667/-, from the S Foods towards arrears of management fee with interest, liquidated damages and the remaining management fee to be paid for the rest of the period at the specified rate, and also forfeiting the deposits.

(vii) OCPL also invoked arbitration clause 11 of the Agreement and sent a notice dated 12.02.2018 to S Foods appointing Hon'ble Mr.Justice K.Venkataraman, a retired

Judge of this Court, as the Sole Arbitrator to adjudicate the disputes between the parties. The S Foods have chosen not to reply to the said notice.

(viii) OCPL also sent an arbitration notice dated 29.03.2018 to the respondents in O.A.No.410 of 2018 invoking clause 18 of the Lease Agreement and appointed Hon'ble Mr. Justice K. Venkataraman, a retired Judge of this Court, as the Sole Arbitrator to adjudicate the disputes between the parties.

(ix) In these circumstances, OCPL is before this Court with these petitions seeking the above reliefs.

5. Denying the allegations of OCPL, a counter affidavit has been filed by the S Foods. It is stated by the S Foods in the counter that it had invested around Rs.61,96,876/- for the establishment and operation of the retail outlet. It is also stated therein that the OCPL has been providing inflated food cost and labour cost and there is no transparency in raising the bills. The staff members of the restaurant are directly employed by OCPL and the S Foods has no direct relationship with them. It is alleged that during Deepavali 2017, all the chefs and kitchen

staffs of OCPL was withdrawn from the restaurant without any prior information leading to the closure of the restaurant and this act of OCPL amounts to termination of the Agreement.

5.1. While denying the other allegations, S Foods accepted the nomination of Hon'ble Mr. Justice K. Venkataraman, as the Sole Arbitrator and thus, submitted that the Arbitral Tribunal alone can grant any interim relief to the parties and this Court cannot entertain these applications filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short "the Act").

5.2. It is stated by the S Foods in the counter affidavit that it does not run the restaurant "FLAVOURS" and it also does not run any business similar to WANGS KITCHEN.

6. The respondents in O.A.No.410 of 2018 stated that they have sent an e-mail as early as on 01.12.2017 terminating the lease Agreement invoking clause 16.2 of the Lease Agreement, after adjusting the security deposit towards rental arrears of Rs.42,500/-, since they have not

been paid with the rent from July 2017 to November, 2017. The respondents also sent a letter dated 26.04.2018 to the OCPL replying to the arbitration letter dated 29.03.2018, wherein, it is reiterated the adjustment of the security deposit towards rental arrears. It is also stated therein that the reference to the arbitration is unwarranted.

7. This Court heard the learned counsel for the parties and perused the materials on record.

8. At the outset, it is to be stated that the prayer of OCPL in O.A.No.410 of 2018 cannot be granted by this Court for the simple reason that the S Foods has categorically stated in the counter affidavit filed in O.A.No.319 of 2018 that it has no nexus with the restaurant "FLAVOURS" and it has got nothing to do with the said restaurant. Even assuming that the respondents in O.A.No.410 of 2018 (landowners) has leased out the premises to another restaurant, the allegation of the applicant (OCPL) that they colluded with S Foods and without terminating the Agreement and the lease agreement running the restaurant in the name of "FLAVOURS" cannot be gone into by this Court in these applications filed under

Section 9 of the Act.

9. It was submitted by the learned counsel Mr.Kuberan that so far as the possession of premises is concerned, it would fall within the purview of the special statute, viz., Tamil Nadu Buildings (Lease and Rent Control) Act, 1963, and the provision of the Act are not applicable. The relationship between the applicant and the owner of the premises being that of landlord and tenant, and the dispute between them relating to the possession of the premises as per lease agreement dated 21.03.2016, it can be safely concluded that only the Tamil Nadu Buildings (Lease and Rent Control) Act, is applicable and the dispute to be resolved only by a Rent Controller and there is nothing for an Arbitrator to adjudicate upon. In **Himangni Enterprises V. Kamaljeet Singh Ahluwalia**, (2017) 10 SCC 706, following the judgment in **Booz Allen and Hamilton Inc. V. SBI Home Finance Limited**, (2011) 5 SCC 532 has held as follows :

"26. **The Delhi Rent Act**, which deals with the cases relating to rent and eviction of the premises, is a special Act. Though it contains a provision (Section 3) by virtue of it, the provisions of the Act do not apply to certain premises but that does not mean that the **Arbitration Act**, ipso facto, would be

applicable to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes. In such a situation, the rights of the parties and the demised premises would be governed by the [Transfer of Property Act](#) and the civil suit would be triable by the Civil Court and not by the arbitrator. In other words, though by virtue of [Section 3](#) of the Act, the provisions of the Act are not applicable to certain premises but no sooner the exemption is withdrawn or ceased to have its application to a particular premises, the Act becomes applicable to such premises. In this view of the matter, it cannot be contended that the provisions of the [Arbitration Act](#) would, therefore, apply to such premises."

Hence, O.A.No.410 of 2018 is not maintainable.

10. In so far as O.A.No.319 of 2018 is concerned, the S Foods has categorically stated in the counter affidavit that it has not inducted the "FLAVOURS" kitchen in its place and therefore, there is no violation of the Agreement committed by it. It is submitted by S Foods that the withdrawal of kitchen staffs from 14.10.2014 during the peak business season in violation of the Agreement by the OCPL amounted to termination of lease. The respondent did

not or never intended to terminate the agreement as alleged by the OCPL. In fact, the withdrawal of the staffs and chefs from the premises ruined the business of the respondent and had to close down the premises without any option. It is pertinent to point out that FLAVOURS restaurant is being run in the demised premises. Further, OCPL invoked arbitration clause 11 of the Agreement, which was duly received by the S Foods appointing Hon'ble Mr. Justice K. Venkataraman as the sole Arbitrator.

11. Since the parties are in agreement with appointing Hon'ble Mr. Justice K. Venkataraman, as the Arbitrator, this Court appoints Hon'ble Mr. Justice K. Venkataraman, a retired Judge of this Court, residing at L-Block, No.125, East Anna Nagar, Chennai-600 102, as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court

Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

12. Accordingly, O.A.Nos.319 and 410 of 2018 are dismissed. Consequently, the pending applications are closed.

Sd/-P.S.N.J

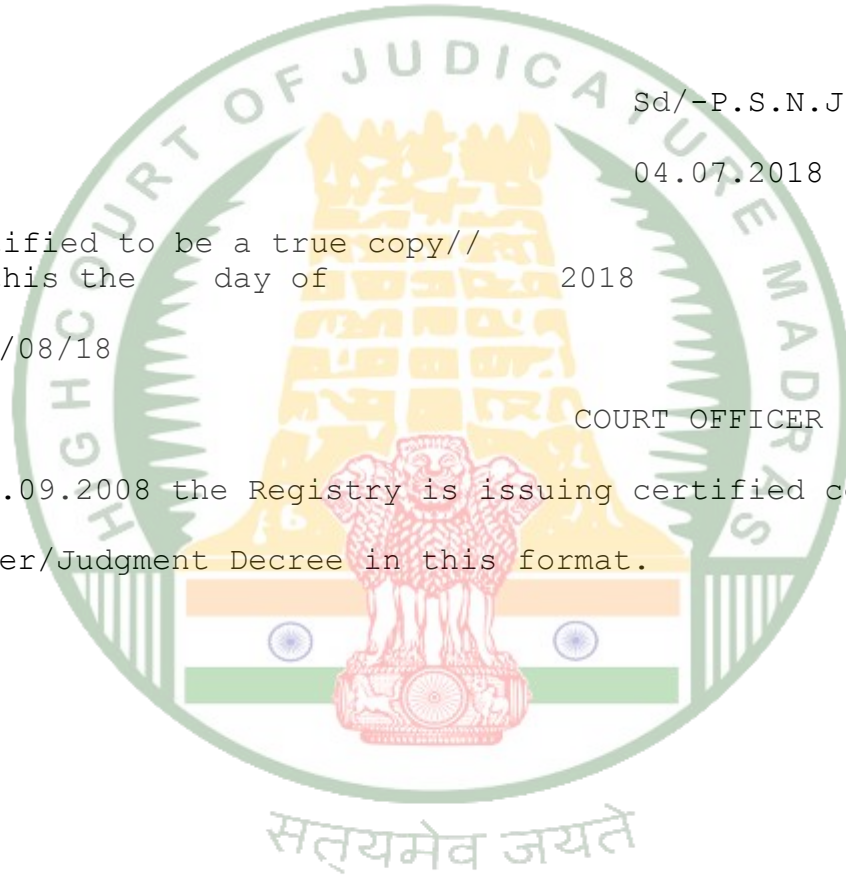
04.07.2018

//Certified to be a true copy//
Dated this the day of 2018

jj 11/08/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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