

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

| Reserved on | Delivered on |
|-------------|--------------|
| 03~06~2019  | 07~06~2019   |

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

**O.P.No.531 of 2015 and**  
**A.No.4551 of 2018**

Mr. Vinod Batla  
No.132, St. Mary's Road,  
Alwarpet,  
Chennai 600018.

.. Petitioner

.Vs.

1. M/s. Matrimmony.com  
(Previously known as Consim Info Private Ltd.)  
10th Floor, 2nd Tower, TVH Belicia Towers,  
MRC Nagar,  
Chennai 600028.

2. Mr.Justice K. Chandru  
"Sakthi Illam"

First Floor, Lalitha Mahal,  
New No.3, Justice Sundaram Road,  
Mylapore, Chennai 600004.

.. Respondents

\* \* \*

**Prayer:** Petition filed under Section 34 of the Arbitration and

Conciliation Act, 1996 praying to set aside the Order dated 22.06.2015 passed by the 2nd Respondent, in Arbitration No.1 of 2014 and allow the counter claim.

\* \* \*

For Petitioner : Mr. Zafferullah Khan  
for M/s.T. Velumani

For R1 : M/s. John Zachariah and  
P.T. Kannan for  
M/s.Fox Mandal & Associates

**ORDER**

This Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 22.06.2015 passed by the learned Arbitrator, Arbitral Tribunal, in Arbitration No.1 of 2014 and to allow the counter claim.

2. First Respondent a company entered into a Leave and License Agreement with the Petitioner on 17.03.2008 for the use and occupation of the premises at Door No.DE-O, Ground Floor, `Whispering Heights`, No.132, St.Mary's Road, Alwarpet, Chennai 600018, for a period of 11 months commencing from 20th March 2008

till 19th February 2009 and agreed to pay a monthly License fee of Rs.1,40,640/- (Rupees One Lakh Forty Thousand and Six Hundred Forty only) (subject only to the deduction of tax at source). Besides that amount, maintenance charges of Rs.1,000/- to be paid to the association of residents. The claimant also paid a sum of Rs.14,06,400/- (Rupees Fourteen Lakhs six thousand four hundred only) as security deposit. It is also agreed between the parties that in the event of agreement being extended for another period of 11 months, the License fee has to be increased by 8%. The agreement can be terminated by giving a notice of not less than 60 days in writing to the other party, of not less than 60 days. On the claimant vacating the premises, the Respondent would return the Security Deposit. Failure to refund the security deposit the same shall carry 18% interest per annum.

3. It is the case of the Claimant/1st Respondent that he issued letter dated 5th September 2008 to the Respondent/Petitioner that they would vacate the premises on 31st October 2008 and requested to refund the security deposit. After such letter they vacated from the

premises on 31.10.2008 and handed over the possession with keys to the Petitioner. As the Petitioner has not refunded the Security Deposit, despite repeated reminders over phone and personal visits by the Claimant's representatives, which resulted in another letter dated 15th March 2009 and 1st July 2009. Hence, he preferred a Claim for refund of security deposit with interest.

4. Whereas, it is the contention of the Respondent/Petitioner that the Claimant never sent any letter dated 5.9.2008. The Claimant was using the premises till 31.05.2009. At no given point of time the Petitioner was informed by the claimant that he was unable to refund the security deposit as he was in financial crunch and letter dated 15.3.2009 is a self generated letter. From November 2008 till the end of May 2009 the Respondent has not paid any License fee totalling a sum of Rs.9,84,480/- . Hence, it is the contention of the Petitioner that the above amount was adjusted towards security deposit. It is the further contention that Electricity Department also made a demand for a sum of Rs.2,32,670/- from the Petitioner. Besides the Respondent is also liable to pay Service Tax.

5. It is further contended that the Petitioner also filed a Counter Claim for a sum of Rs.5,61,202/- on the ground that he has incurred expenditure towards furnitures and paying the labour charges of fixing the shelves set out in Annexure-A, and also electricity due. The Arbitrator appointed by this Court heard the matter in detail and both sides let in oral evidence and documents have been marked and ultimately learned Arbitrator passed an Award for a sum of Rs.26,84,680/- and dismissed the Counter Claim raised by the Petitioner. Aggrieved over the same, this Application under Section 34 of the Arbitration and Conciliation Act has been filed.

6. Learned counsel appearing for the Petitioner submitted that though Lease and License Agreement for the use and occupation of the premises was entered on 17.3.2008 for a period of 11 months, it is specifically agreed between the parties is that two months notice shall be given in writing before vacating the premises. The alleged letter dated 5.9.2008 informing the Petitioner about vacating the premises on 31.10.2008 and another communication dated 15.3.2009 were

created for the case and no notice in writing sent. In the cross examination of the P.W.1 makes it clear that the notice has not given as agreed in the terms of contract. Hence, it is the contention of the learned counsel that the contract consist of reciprocal promises to be simultaneously performed. Therefore, it is his contention that that as long as the notice in writing has not been given, the First Respondent is not entitled to claim security deposit as well as interest. The contention that First Respondent vacated the premises on 31.10.2008 has not been established whereas only 31.5.2009 the premises was vacated. From 1.11.2008 till 31.5.2009 First Respondent has not paid any License fee as agreed in the contract. The above amount has been adjusted and the remaining amount has been paid by way of cheque which was also encashed. Whereas the learned Arbitrator has overlooked the fundamental principle of law and drawn influence mere conjuncture that the tenant vacated the premises on 31.10.2008, without any materials. The learned Arbitrator has failed to consider the fact that onus lies on the person to prove the specific allegation about the determination of the license. Hence, it is the contention that when the Arbitral Award is result of utter violation of the substantial

provision of law of India, it amounts to violation, it is against the public policy of India and such Award is certainly liable to be interfered u/s 34 of the Arbitration and Conciliation Act, 1996.

7. It is his further contention that admittedly, amenities have been provided by the landlord which is not in dispute. Learned Arbitrator has not taken into consideration of these facts and simply dismissed the application. Hence it is the contention that the Award passed by the Learned Arbitrator is liable to be set aside. In support of his submissions he relied upon the following judgments of the Honourable Supreme Court and this Court:-

1. Oil and Natural Gas Corporation Ltd., v. Saw Pipes Ltd.,  
**[2003 (5) SCC 705]**
2. M/s. Puruvankara Projects Limited v. Mrs.Ranjani  
Venkatraman Ganesh **[2018 (6) CTC 510]**

8. Whereas the learned counsel appearing for the First Respondent submitted that Arbitrator has factually found that First Respondent has vacated the premises on 31.10.2008 and thereafter there was no demand whatsoever made by the Petitioner for License

fee. When the Award has been passed after considering the entire factual aspects, documents and oral evidence, there cannot be any other interpretation to non-suit the Award. Hence, it is his contention that the Award is reasonably ordered and it cannot be interfered. In support of his contention he relied upon the following citations:-

1. Oil and Natural Gas Corporation Ltd., v. Western Geco International Ltd. **[2014 (9) SCC 263]**
2. Swan Gold Mining Ltd., v. Hindustan Copper Ltd., **[2015 (5) SCC 739]**
3. Lion Engineering Consultants v. State of Madhya Pradesh and others **[2018 (16) SCC 758]**
4. H.P.Financial Corp v. Anil Garg & Ors. **[2017 AIR SC 1953]**

9. In the light of the above submissions now it has to be seen whether the award passed by the Arbitrator is against the fundamental policy of Indian law or the interest of India or suffered from patent illegality or contrary to justice and morality and it is unfair and unreasonable, shocking the conscience of the court.

10. It is the admitted fact that Leave and License Agreement was entered between the parties viz., the Petitioner and the Respondent commencing from 20.3.2008 to 31.05.2009. As per the agreement Claimant has paid a sum of Rs.14,04,640/- as a Security Deposit. And License Fee is agreed upon Rs.1,46,640/- besides Rs.1,000/-towards maintenance. The relevant portion in the term of agreement is as follows:

**"Term of Agreement**

- This Agreement shall be valid for a period of 11 months and extendable to further period of 11 months subject to Mutual Consent before 30 days on expiry of the first Lease Period.
- Either party shall be entitled to terminate this agreement by giving a notice in writing to the other party of not less than 60 days.

On the expiry or termination of this Agreement for any reason whatsoever, the licensee shall be liable to forthwith remove themselves from the said office premises. If the licensee failed to vacate the office premises, the Licensor shall be entitled to deny access to the Licensee to the said office premises and the Licensee shall be obliged to pay damages at the rate of Rs.5000/- per day to the Licensor. If the Licensee fails to pay such damages, the licensor shall be entitled to deduct the amount of the damages from the amount of security deposit. After the Licensee removes themselves from the said office premises and upon payment or adjustment

of the amount of damages, as the case may be, the Licenser shall refund the security deposit to the Licensee. In case the Licenser do not return the said deposit to the Licensee as aforesaid then the Licensee shall (without prejudice to its right and remedies in the laws) be entitled to continue the sue of the said office premises without being liable to pay any fee/compensation, outgoing or damages to the Licenser until such time as the Licenser refund the client the said security deposit a sum of Rs.14,06,400/- (Rupees Fourteen Lakhs Six thousand and four hundred only) with interest thereon calculated at the rate of 18% p.a. from the date on which the Licensee was willing on the expiry of the leave and license agreement, to vacate the said office premises.

- The Office premises is provided to the Licensee only and the rights and obligations under this agreement is neither transferable nor available on termination of this Agreement under any circumstances.
- The Licensee both hereby promises to handover peaceful and exclusive possession of the said office premises to the Licenser on the expiry of this agreement period and the Licenser both hereby promises to refund the Security Deposit amount to the Licensee after deducting legal dues, if any.
- Any notice or other communication provided for in this Agreement shall be in writing and shall be transmitted (a) by postage prepaid registered mail with acknowledgment due or by courier service, or (b) by facsimile transmission to the parties as follows , as elected by the party giving such notice.

In the case of notices to the Licensor :

Mr.Vinod Bhada  
Pent House, 132,  
St. Mary's Road,  
Alwarpet,  
Chennai – 600 018.

In the case of notice to the Licensee :

M/s.Consim Info Pvt. Ltd.,  
#94, TVH BELICIAA Towers,  
Tower 2, 10<sup>th</sup> Floor,  
MRC Nagar, Mandaveli,  
Chennai – 600 028.  
Tel : - 044 24631500

- All notices of other communications shall be deemed to have been validly given on (a) the expiry of 7 (Seven) days after posting if transmitted by registered mail, or (b) the date of receipt if transmitted by Courier, or (c) the business date immediately after the date of transmission with confirmed answer back if transmitted by the facsimile transmission whichever shall first occur.
- The Licensor and the Licensee may, from time to time, change their address or representative for receipt of notices or other communications provided for in this Agreement by giving to the other not less than 10 (ten) days prior written notice to that effect. "

11. The only dispute pertaining to parties relate to vacating of the premises. It is the contention of the claimant viz., Licensee that they issued notice dated 5.9.2008 informing the Licensor that they

would vacate the premises on 31.10.2008 and vacated the same on 31.10.2008. Whereas it is the contention of the Licensor that no such notice as per the contract issued to them, whereas the Licensee has vacated the premises only on 31.5.2009. From November 2008 till 31.05.2009 no License Fee paid by the Licensee. Therefore, it is the contention of the Licensor that License fee has been adjusted from the security deposit of a sum of Rs.14,04,640/- and balance has been paid to the Licensee. Whereas the claimant viz., Licensee took a specific contention that they vacated the premises on 31.10.2008 and they are not liable to pay the License fee till 31.5.2009. Learned Arbitrator considering the evidence adduced by both sides held that premises was vacated on 31.10.2008 as contented by the Licensor and passed Award taking into consideration of various aspects.

12. In fact, learned Arbitrator though found that notices dated 5.9.2008 and 15.3.2009 have not in accordance with the terms of agreement as it was neither sent by Registered Post nor by Courier. But nevertheless held that in the letter dated 1.7.2009 the claimant had referred to the previous two letters and demanded refund of the

security deposit, which was replied only on 15.10.2009 marked as Ex.C.5. The above letter was posted only after 1 ½ months from the date found in the letter and was received by the claimant on 1.12.2009 as per endorsement seen in Ex.C.5. In fact, taking note of the fact that after 1.11.2008 Electricity Consumption Charges not paid. Similarly, maintenance charges payable to the Association also not claimed by the Association from the claimant and telephone connections obtained by the claimant's company were also cancelled. Further the claimant has also entered a sub-lease deed in some other premises for a sum of Rs.4,61,714/- . Further, to the fact that even after alleged default committed by the Licensee from November 2008 till 31.5.2009 no demand whatsoever made by the Licensor. By taking into consideration of the human conduct and natural events of the parties, learned Arbitrator has come to the conclusion that the claimant has vacated the premises on 31.10.2008 and passed the Award.

13. In fact, the learned Arbitrator came to the conclusion that the claimant has vacated the premises on 31.10.2008 after analysing the

factual aspects. In the light of the above, now it has to be seen whether the Petitioner is made out the case to interfere under Section 34 of the Arbitration and Conciliation Act. Scope of interference under Section 34 of the Arbitration and Conciliation Act 1996 is discussed in ***Oil and Natural Gas Corporation Ltd., v. Saw Pipes Ltd., [2003 (5) SCC 705]***, wherein the Honourable Apex Court has held that an Award can be set aside if it is contrary to:

- a) fundamental policy of Indian law; or
- b) the interest of India; or
- c) justice or morality; or
- d) if it is patently illegal

Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

14. In a subsequent judgment in ***McDermott International Tnc., v. Burn Standard Co.,Ltd., [2006 (11) SCC 181]*** when the Apex Court explained the term patent illegality and held that patent illegality must go to the root of the matter. Public Policy violation should be so unfair and unreasonable as to shock the conscience of the

Court. The supervisory role of the Court under Section 34 is to be kept at a minimum level and interference is envisaged only in case of fraud or bias, violation of natural justice, etc., If the Arbitrator has gone contrary to or beyond the express of law of the contract or granted relief in the matter not in dispute that would come within the purview of Section 34 of the Arbitration and Conciliation Act 1996.

15. A Division Bench of this Court in ***Puravankara Projects Limited v. Mrs.Ranjani Venkatraman Ganesh and Another [2018 (6) MLJ 588]*** also followed the above judgment of the Apex court and held that only in the circumstances envisaged under the decision of the Apex Court the Award can be interfered.

16. In ***Swan Gold Mining Ltd., v. Hindustan Copper Ltd reported in 2015(5) SCC 739*** the Honourable Apex Court has held as follows:

"12. [Section 34](#) of the Arbitration and [Conciliation Act](#), 1996 corresponds to [Section 30](#) of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of [Section 34](#) of the Act, an arbitral

award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal.

13. It is equally well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.

21. Mr. Sharan, learned senior counsel appearing for the appellant, also challenged the arbitral award on the ground that the same is in conflict with the public policy of India. We do not find any substance in the said submission. This Court, in the case of Oil and Natural Gas Corporation Ltd. (supra), observed that the term 'public policy of India' is required to be interpreted in the context of jurisdiction of the Court where the validity of award is challenged before it becomes final and executable. The Court held that an award can be set aside if it is contrary to fundamental

policy of Indian law or the interest of India, or if there is patent illegality. In our view, the said decision will not in any way come into rescue of the appellant. As noticed above, the parties have entered into concluded contract, agreeing terms and conditions of the said contract, which was finally acted upon. In such a case, the parties to the said contract cannot back out and challenge the award on the ground that the same is against the public policy. Even assuming the ground available to the appellant, the award cannot be set aside as because it is not contrary to fundamental policy of Indian law or against the interest of India or on the ground of patent illegality.

22. The words “public policy” or “opposed to public policy”, find reference in [Section 23](#) of the Contract Act and also [Section 34 \(2\)\(b\)\(ii\)](#) of the Arbitration and Conciliation Act, 1996. As stated above, the interpretation of the contract is matter of the Arbitrator, who is a Judge, chosen by the parties to determine and decide the dispute. The Court is precluded from re-appreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy."

17. Having regard to the above judgments on a perusal of the entire Award, though notice is required in writing has not been established. The fact remains that the Arbitrator has considered the entire evidence and analysed the facts, come to the conclusion that the petitioner is also residing in the same address. Taking note of the

conduct of the Petitioner, held that even assuming that there is 5 days short in the notice has passed award after analysing factual aspects. When the Arbitrator has considered the entire facts and arrived a conclusion, merely because such conclusion capable of some other interpretation that cannot be construed as violation of public policy. It is the contention of the learned counsel that as long as the reciprocal promise has not been performed by one of the contract party other need not to perform his obligation cannot be countenanced for the simple reason that the learned Arbitrator has factually found that all his contention is not correct. Hence, Section 50, 51 and 52 of the Contract Act, cannot be pressed into service for non-suit well versed Award on factual aspects. Hence, I am of the view that the finding of the Arbitrator cannot be interfered.

18. However, taking not of the fact that it is only a Lease and License Agreement invoking 18% of the contractual interest, in my view, though the parties are agreed such contractual agreement, thereby in order to give a quietus to the parties, the interest has to be on a reasonable basis and should not be exorbitant. Therefore, this

Court is inclined to restrict the interest at the rate of 7.5% p.a. from 18% from the date of Award. Future interest at the rate of 7.5% is awarded.

19. As far as the counter claim is concerned, the Learned Arbitrator has factually found that though the amenities were provided, there is no agreement to compensate the alleged loss. Further it is not the case of the petitioner that the furniture were damaged and the damages were also not proved. Further it is also held that as the claimant already vacated the premises subsequent electricity dues after the period cannot be ordered to be paid by the claimant and the same is dismissed.

20. In the result the Award is modified on the above terms. Accordingly O.P.is partly allowed. Connected Application is closed. No costs.

WEB COPY

**.06.2019**

Index : Yes / No  
Internet: Yes  
Speaking/Non-speaking order  
ggs

**N. SATHISH KUMAR, J.**

ggs

To

1. M/s. Matrimmony.com  
(Previously known as Consim Info Private Ltd.)  
10th Floor, 2nd Tower, TVH Belicia Towers,  
MRC Nagar,  
Chennai 600028.
2. Mr. Justice K. Chandru  
"Sakthi Illam"  
First Floor, Lalitha Mahal,  
New No.3, Justice Sundaram Road,  
Mylapore, Chennai 600004.



order in:

**O.P.No.531 of 2015**

WEB COPY

**07.06.2019**