O.A.Nos.219 and 220 of 2019
& A.Nos.1967 to 1970 of 2019
and A.Nos.4025 and 4026 of 2019

PUSHPA SATHYANARAYANA, J.

The dispute in all these applications revolves between the tenant and the landlord.

2. The applicant, who is the tenant of a shop, filed O.A.No.219 of 2019 seeking an order of interim injunction restraining the respondent or their representative from interfering with the peaceful running of the applicant's store named SPEEDO situated at First Floor of the Mall named "VR-Chennai", Koyambedu, Chennai, so as to enable the applicant from running shop "SPEEDO" peacefully, pending disposal of the arbitration.

2.2. Similar prayer was made by the applicant in O.A.No.220 of 2019 with respect to the shop named JOCKEY.

3. The respondent/landlord filed applications A.Nos.1967 to 1970 of 2019. The prayer made in A.Nos.1967 and 1968 of 2019 is to dismiss O.A.Nos.219 and 220 of 2019 as incompetent and not maintainable.

3.1. A.Nos.1969 and 1970 of 2019 were filed by the landlord to suspend the interim order dated 07.03.2019 on account of non-compliance of Order 39, Rule 3 of the Code of Civil Procedure, 1908 (in short, “CPC”) by the tenant.

4. The applicant/tenant filed A.Nos.4025 and 4026 of 2019 praying to direct the respondent/landlord to furnish security in the sums of Rs.20,03,18,969/- and Rs.17,83,01,519/- respectively to the credit of the aforesaid applications.

5. The respondent developed a shopping mall known as VR-Chennai. The applicant is a franchise of the well-known brands SPEEDO and JOCKEY and desirous to operate their retail stores in the respondent mall. Unit Nos.F-26 and F-32 in the mall on the first floor admeasuring 525 sq.ft. And 2512 sq.ft. respectively together with the right to use the staircases, common areas, etc. were taken on lease. Memorandum of Understanding dated 02.02.2018 (in short, "MoU"), recording the mutual understanding as to the terms and conditions of the proposed lease, was entered into by the parties. As per the said MoU, the period of lease is for five years with the lock-in period of first twenty-four months. It was also agreed that the parties would enter

into a lease agreement within a period of 30 days from the date of signing of the MoU. After signing of the MoU, the applicant had invested huge money for the shop for the retail sales of the reputed brands SPEEDO and JOCKEY. A Lease Deed without date was sent to the applicant, which was signed by the applicant and was sent back to the respondent for their signature. However, the respondent had not returned the signed lease agreement to the applicant till date, as stated in the affidavit.

6. It is stated that the mall was opened on 18.06.2018 without any formal inaugural ceremony, which itself was very disappointing for the applicant as for any commercial venture, the advertisement is essential. The applicant had paid a sum of Rs.50,000/- as refundable deposit, at the time of delivery of possession and the lease was to commence from 21.09.2018 and 03.08.2018 with the lock-in period of twenty four months. The rents were fixed at Rs.1,33,875/- and Rs.4,77,280/-. The applicant also had paid Rs.8,66,250/- and Rs.36,300/- as Security Deposit equivalent to six months rent as Interest Free Refundable Security Deposit for the SPEEDO shop. Similarly, it paid Rs.30,14,400/- and Rs.30,000/- as Interest Free Refundable Security Deposit for the JOCKEY shop.

7. Admittedly, the lease deeds entered into between the applicant and the respondent were not registered. Though the stamp duty itself will be around Rs.1,46,500/- and Rs.4,39,400/- for the registration of the lease agreements, the applicant had agreed for the same on condition that the signed copies of the same were handed over to them. As stated earlier, since there was no grand inauguration of the said mall, the applicant had a set back in the business and it was mutually agreed that the applicant would pay only 50% of the rent till the business reaches breakeven point.

8. While so, without any notice, the respondent had put barricades in front of the shops on 02.03.2019. The said act of the respondent is in violation of the principles of natural justice, as the same was not informed to the applicant. As stated above, the appilcant had incurred huge expenditure in making of the shop rooms. The act of the respondent in putting barricades and preventing the applicant and his people from entering into the shop caused great mental agony and huge reputation loss among retailers.

9. The applicant claimed that it had expended Rs.46,30,794/- and Rs.1,13,16,710/- for running the shops and had already requested the respondent to accept 50% of their agreed rent and paid it till February 2019. In such situation, the respondent restrained the applicant from opening the shop in the business hours of the mall, when the applicant had adequately stocked the shop with all the goods.

10. In those circumstances, the applicant has filed these applications under Section 9 of the Arbitration and Conciliation Act, 1996 (in short, "the 1996 Act") seeking to restrain the respondent from interfering with the peaceful running of the shops.

11. This Court on 07.03.2019 injuncted the respondent from interferring with the peaceful business of the applicant on certain conditions.

12. These applications were resisted by the respondent seeking to vacate the aforesaid interim order granted by this Court and to dismiss the original applications. The preliminary objection raised by the respondent is that the applicant cannot invoke the arbitration

clause as contained in the MoU dated 02.02.2018 and also the unsigned and unregistered lease deeds. As the applications are not maintainable on jurisdictional grounds, the applicant is not entitled for any interim relief from this Court.

13. The question that arises for consideration in these applications is whether the applicant is entitled to invoke the provisions of the 1996 Act based on the MoU dated 02.02.2018 and the unregistered lease deeds ?.

14. Mr.AR.L.Sundaresan, learned Senior Counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in **SMS Tea Estates Private Limited V. Chandmari Tea Company Private Limited, (2011) 14 SCC 66,** wherein, it is held that before admitting the document into evidence or acting upon such document, the Court has to examine whether the document is duly stamped and it is compulsorily registerable.

15. No doubt, an arbitration agreement is not compulsorily registerable, but the lease deeds, which are for a period of five years, are compulsorily registerable and it should also be sufficiently stamped

even an admitted by the applicant. Though the applicant has categorically admitted in the affidavit that the stamp duty is around Rs.1,46,500/- and Rs.4,39,400/- and agreed to register the same, it is its case that the signed copies of the asme were not returned to the applicant by the respondent.

16. Be that as it may, there are MoUs entered into between the parties dated 02.02.2018, as per which, the parties have to enter into the lease deeds. The said MoUs contain arbitration clause. The lease deeds have also been entered into by them and signed by the applicant, but it had not been returned to the applicant, after signing, by the respondent. Admittedly, the lease deeds are compulsorily registerable, but they are not registered. Though the arbitration agreement is independent of other terms of the contract, considering the admissibility of the same in evidence, the applicant has to compulsorily register them. The applicant is ready to register the documents, but he could not proceed to do so for various reasons being -

(i).The stamp duties payable are huge ;

(ii).The agreements, being bilateral documents, the same were not returned to the applicant with the signatures of the respondent ;

(iii).The applicant, admittedly, has not been paying the contractual rent, but paying only 50% of the agreed rent and the reason being that the respondent is at fault.

(iv).The applicant was denied trade licence as the building does not have water and sewerage connection ;

(v).The applicant also has got the right to challenge the refusal of the trade licence before the Standing Committee.

17. From the above factual position, it is clear that all is not well with the applicant as its lease deeds are not stamped and registered ; its trade licences are refused, its access to the premises is blocked by the respondent, etc.

18. The applicant has invoked Section 9 of the 1996 Act to redress his grievances before resorting to arbitral proceedings, though the MoUs contain the arbitration clause and the same does not require registration, as it only contains clauses to enter into the separate lease deeds, which are already executed. The arbitration clause contained therein can be looked into. However, the said arbitration clause contained therein prescribes the seat of arbitration as Delhi.

19. So far as the lease deeds are concerned, admittedly, they are not registered, though the same are compulsorily registerable.

Though the lease deeds will not affect the immovable property, which is the subject matter, the document will not be received as evidence, when it is not registered.

20. The Hon'ble Apex Court in **SMS Tea Estates Private Limited V. Chandmari Tea Company Private Limited, (2011) 14 SCC 66,** relied on by the learned Senior Counsel for the applicant held as follows :

> "19. Having regard to Section 35 of the Stamp Act, unless the stamp duty and penalty due in respect of the instrument is paid, the court cannot act upon the instrument, which means that it cannot act upon the arbitration agreement also which is part of the instrument. Section 35 of the Stamp Act is distinct and different from Section 49 of the Registration Act in regard to an unregistered document. Section 35 of the Stamp Act, does not contain a proviso like Section 49 of the Registration Act enabling the instrument to be used to establish a collateral transaction.
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> 22. We may therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registerable) and which is not duly stamped:
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> 22.1. The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registerable.
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> 22.2. If the document is found to be not duly stamped, Section 35 of the Stamp Act bars the said document being acted

upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Sections 35 and 38 of the Stamp Act.

22.3. If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the court or before the Collector (as contemplated in Section 35 or 40 Section of the Stamp Act), and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped.

22.4. Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registerable. If the document is found to be not compulsorily registerable, the court can act upon the arbitration agreement, without any impediment.

22.5. If the document is not registered, but is compulsorily registerable, having regard to Section 16(1)(*a*) of the Act, the court can delink the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 15 above. If the respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.

22.6. Where the document is compulsorily registerable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (*a*) as evidence of contract in a claim for specific performance, and (*b*) as evidence of any collateral transaction which does not require registration."

21. The Hon'ble Apex Court in **Garware Wall Ropes Ltd. V. Coastal Marine Constructions & Engineering Ltd., 2019 (3) CTC 339**, after referring the judgment in **Sri Venkataramana Devaru V. State of Mysore, 1958 SCR 895, J.K.Cotton Spinning & Weaving Mills Co. Ltd. V. State of U.P., 1961 (3) SCR 185, Chief Inspector of Mines V. Lala Karam Chand Thapar, 1962 (1) SCR 9** and **Anwar Hasan V. Mohd. Shafi, 2001 (8) SCC 540,** held as follows :

"One reasonable way of harmonising the provisions contained in Sections 33 and 34 of the Maharashtra Stamp Act, which is a general statute insofar as it relates to safeguarding revenue, and Section 11(13) of the 1996 Act, which applies specifically to speedy resolution of disputes by appointment of an arbitrator expeditiously, is by declaring that while proceeding with the Section 11 application, the High Court must impound the instrument which has not borne stamp duty and hand it over to the authority under the Maharashtra Stamp Act, who will then decide issues *qua* payment of stamp duty and penalty (if any) as expeditiously as possible, and preferably within a period of 45 days from the date on which the authority receives the instrument. As soon as stamp duty and penalty (if any) are paid on the instrument, any of the parties can bring the instrument to the notice of the High Court, which will then proceed to expeditiously hear and dispose of the Section 11 application. This will also ensure that once a Section 11 application is allowed and

> an arbitrator is appointed, the arbitrator can then proceed to decide the dispute within the time frame provided by Section 29A of the 1996 Act."

22. The above judgment affirms the proposition that unless the document, which is compulsorily registerable, is not registered or not stamped properly, the same has to be impounded by the Court and handed over to the authority to decide the stamp duty payable in order to register the same for the purpose of looking into the terms of the contract.

23. In the case on hand, it is stated that the respondent had not handed over the signed documents. Therefore, the respondent is directed to handover the signed lease deeds to the applicant within a period of a week from the date of receipt of a copy of this order, after which, the applicant is directed to present it before the registering authority concerned for registeration by paying requisite stamp duty and get it registered within a period of four weeks thereafter. Once registeration is done, it will cure the defects in the documents and the same can be received in evidence and the arbitration clause also can be invoked as stipulated therein.

24. The applicant is directed to continue to pay 70% of the rent amount agreed upon, without any default, till such time, the lease deeds are registered and thereafter, application under Section 17 of the 1996 Act is filed in resolving the disputes, after initiating arbitration proceedings. As the respondent is receiving the rents, though not as agreed, equity warrants that the applicant be allowed to access the premises leased for.

25. With the above directions, these applications are disposed of.

28.06.2019

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

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PUSHPA SATHYANARAYANA, J.

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28.06.2019