

A.No.2522 of 2019 in O.A.No.878/2018 &
A.No.2523 of 2019 in O.A.No.876/2018 &
A.No.2524 of 2019 in O.A.No.877 of 2018

R.SURESH KUMAR, J.

These applications have been filed with the following prayer:

To extend the interim order already granted vide order dated 20.09.2016 and subsequently, extended vide order dated 05.10.2018 in O.A.Nos.876, 877 and 878 of 2018 restraining the respondents herein from encumbering or otherwise alienating the Tamil Cinematography film title Druva Natchatiram starring Vikaram and others and directed by Mr.Gowtham Vasudev Menon in any format whatsoever anywhere in the World without settling the dues of the applicant pending disposal of the Arbitration proceedings.

2. In all these main applications i.e., O.A.Nos.876 to 878 of 2018 filed under Section 9 of the Arbitration and Conciliation Act, this Court passed an interim order on 20.09.2018, and the same has been extended for a period of 90 days, by order dated 05.10.2018 since in that application, the respondent remain absent.

3. The learned Judge, on 05.10.2018 while extending the order for a period of further 90 days, has given a direction that, within the said 90 days period, the applicant has to invoke the Arbitration clause and also if Arbitrator is appointed and enter upon reference, he shall decide whether the interim order granted by this Court has to be continued for a further period, under Section 17 of the Arbitration Act and the learned Judge has further stated in the said order dated 05.10.2018 that, at the expiry of 90th day from 05.10.2018, the interim order shall stand vacated, unless get extended by the applicant.

4. Only in this context, these three applications have been filed by the applicant, with the aforesaid prayer.

5. I have heard the learned counsel appearing for the applicant as well as the learned counsel for the respondents.

6. Learned counsel appearing for the applicant submits that, though such a conditional extension was given by this Court,

by order dated 05.10.2018, extending the interim order made in the earlier application dated 20.09.2018 for a period of 90 days, a direction was given to the applicant, to approach the Arbitrator by filing an application under Section 17 of the Act, for getting extension of the interim order.

7. In this context, the learned counsel submitted that, even though such a conditional extension was given, this Court in a parallel proceeding under Section 11 of the Act in O.P.No.12 of 2019, has appointed an Arbitrator, who entered upon the reference by sending a communication only on 19.03.2019. Therefore, till 19.03.2019, the applicant had no occasion, to file an application invoking Section 17 of the Act seeking extension of the interim order granted by this Court, as directed by this Court in its order dated 05.10.2018.

8. At any rate, now the Arbitrator has been appointed and he has fixed the preliminary hearing also. However, with reference to the fixation of Rules of Arbitration to be followed by the Arbitrator is concerned, there is some dispute, and it can also be resolved by the Arbitrator as well.

9. Be that as it may, the learned counsel appearing for the applicant submitted that, the applicant is ready and willing to file an application under Section 17 of the Act immediately, before the Arbitrator and till the Arbitrator decides the issue, with reference to further extension of interim order granted by this Court, the interest of the parties shall be protected, by extending the interim order already granted which, by virtue of the order of this Court dated 05.10.2018 expired on the 90th day.

10. However, Ms.Revathi Manivannan, learned counsel appearing for the respondent vehemently contended that, though the respondent remained ex-parte in those main applications, subsequently, they came to know about the order passed by this Court, where, interim order has been granted, since the interim order was granted only for a limited period and the same is subject to the condition that, an application under Section 17 of the Arbitration Act is to be filed, hence, the respondents, thought of agitating the issue before the Arbitrator on merits and that is the reason, neither any appeal has been filed nor any petition seeking to vacate the interim order has been filed. Learned counsel for the respondent further

submitted that, since now the Arbitrator has been appointed, it is for the applicant to invoke Section 17 of the Act and file an application and seek for extension of interim order, without having resorted to such a mechanism as has been in fact directed by this Court, by order dated 05.10.2018, the applicant has chosen to file these three applications, seeking extension of the order and such extension cannot be granted in these three applications, as the applicant has not chosen to file an interim application under Section 17 of the Act before Arbitrator.

11. I have considered the said submissions made by both sides and perused the materials placed before this Court.

12. No doubt, this Court by order dated 20.09.2018, granted an interim order in all these main applications and the said order has been extended for a period of 90 days, ofcourse with a condition that, the applicant shall approach the Arbitrator for extension of such order and as to whether, the order granted by this Court has to be extended or not, has to be decided only by the Arbitrator on merits and if no such attempt has been made, the interim order

granted on 20.09.2018 shall stand vacated, unless it is extended by the Arbitrator.

13. Pursuant to the order passed by this Court dated 05.10.2018, by the learned Judge, who has given a direction to the applicant to invoke Section 17 of the Arbitration Act, has also further stated that, if Arbitrator is appointed to enter upon reference, whether the interim order granted by this Court has to be continued for a further period, has to be decided only by the learned Arbitrator.

14. Therefore, the learned Judge directed the applicant to approach the Arbitrator by filing an application under Section 17 of the Act, provided an Arbitrator is appointed.

15. In these cases as stated above, only on 22.02.2019 an Arbitrator was appointed and he had entered upon reference by sending a letter only on 19.03.2018, therefore, till such time, no application could be filed before the Arbitrator under Section 17 of the Act.

16. When that being so, no blame can be made against the applicant for not approaching the Arbitrator by invoking Section 17 of the Act and the reasons for the delay in filing the application under Section 17 of the Act cannot be attributable to the applicant. In that view of the matter, since the learned counsel for the applicant today submitted that within the shortest possible time, the applicant will approach the Arbitrator, seeking extension of the order by filing an application under Section 17 of the Act, the same is taken into consideration.

17. Recording the said submissions, this Court is inclined to pass the following order:

(i) That the applicant shall approach the Arbitrator by filing necessary applications under Section 17 of the Arbitration Act, within a period of two weeks from today. Once such application is filed, it is for the Arbitrator to decide the said applications on merits and whatever order be passed by the Arbitrator, that will be the finality with reference to the extension of the interim order granted by this Court dated 20.09.2018.

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(ii) The interim order is therefore, extended on condition that, within a period of two weeks from today, the applicant shall move an application under Section 17 of the Act. And it is further made clear that, if any such application is not filed for whatever reason within the said period, the interim order extended today, under this order, shall stand automatically vacated on the expiry of the 15th day.

With these directions and orders, all these applications are disposed of.

02.04.2019

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