IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25th DAY OF OCTOBER 2019

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.A.Nos. No.277 and 278 of 2019

In the matter of disputes between M/s.Kalaignar TV Pvt. Ltd., and Sneha Media Entertainment LLC arising out of agreement dated 18.03.2010

Kalaignar TV Pvt. Ltd.,
Represented by its Vice President (Finance)
G.Rajendran
Anna Arivalyam,
Nos.367 & 369 Anna Salai,
Chennai 600 018. ..Applicant
(in both Original Applications)

Vs.

1.Sneha Media Entertainment LLC
Rep. by its Director,
12310 Pinecrest Road,
Suite 305, Reston, VA 20191.

2. Mr.Ramesh Annamreddy
No.49-54-13/6, N.E.Colony,
Seethammadhara
Visakhapatnam 530 013
Andhra Pradesh. ... Respondents.
(in both Original Applications)

O.A.No. No.277 of 2019

Original Application praying this Hon'ble Court be pleased to grant an order of ad-interim injunction restraining the 1st and 2nd respondents, their men, staff, agents, servants, employees, programmers, assigns, representatives, distributors, dealers and/or all other persons claiming through or under them from in anyway, directly or indirectly broadcasting, downlinking, telecasting, reproducing or publishing the Applicant's channels 'Kalaignar TV', 'Kalaignar Seithigal', 'Kalaignar

Isai Aruvi' (Isai Aruvi), 'Kalaignar Srippoli' (Sirippoli), 'Kalaignar Murasu' (Murasu) or anypart of the content thereof, anywhere around the world.

O.A.No. No.278 of 2019

Original Application praying this Hon'ble Court be pleased to grant an order of ad-interim injunction restraining the 1st and 2nd respondents,from in any way initiating or prosecuting any suit, claim, action or arbitral proceedings against the Applicant herein in any Court other than Courts in Chennai.

These Original Applications coming on this day before this Court for hearing THE COURT MADE THE FOLLOWING ORDER:-

O.A.No.277 of 2019 has been filed by the applicant-Company seeking to grant an order of ad-interim injunction restraining the respondents 1 and 2 from in any way directly or indirectly broadcasting, downlinking, telecasting, reproducing or publishing the applicant's channels 'Kalaignar TV', 'Kalaignar Seithigal', 'Kalaignar Isai Aruvi' (Isai Aruvi), 'Kalaignar Siruppoli' (Siruppoli) and 'Kalaignar Murasu'(Murasu) or any part of the content thereof, anywhere around the world.

2. O.A.No.278 of 2019 has been filed by the applicant-Company seeking to grant an order of ad-interim injunction restraining the respondents 1 and 2 from in any way initiating or prosecuting any suit, claim, action or arbitral proceedings against the applicant herein in any Court other than the Courts in Chennai.

3. The applicant-Company and the first respondent had entered into a 'Television Broadcast Rights and Licensing Agreement' dated 18.03.2010 for exclusive distribution and re-broadcasting of the applicant's network broadcast feed

for all media, including, satellite, cable, mobile and non-exclusive licence for IPTV within the United States of America on such terms and conditions as mentioned in the said agreement including payment of licence fee of US$ 75000 as minimum guarantee per month. The term of the agreement was for five years, effective from 01.04.2010. The said agreement underwent several amendments, firstly on 27.10.2010, secondly on 19.12.2012 and thirdly, on 15.02.2017. As per the third amendment, the first respondent agreed to pay the monthly licence fees. In addition to regular payments, the first respondent also agreed to pay the outstanding amount of US$ 3,27,432 in equated monthly instalments.

4. Despite the above said agreement, the first respondent had defaulted in payments. Except the payment of US$ 50,716 during March 2017, the first respondent did not pay the monthly licence fee of US$ 26,858. On the other hand, only equated monthly installments towards old due were paid. Thus, the first respondent was not regular in paying the licence fees and they were chronic defaulter. The first respondent had also expressed their inability to continue the distribution of the applicant's television channels in the territory of U.S.A and requested the applicant to terminate the agreement dated 18.03.2010 and its addendums dated 19.12.2012 and 15.02.2017 by mutual consent. The first respondent is in default of payments of licence fees, totalling a sum of US$ 3,13,222 after adjusting the advance payment made by them.

5. Thereafter, a draft termination agreement was prepared by the applicant and the same was sent to the first respondent for approval as early as on 01.08.2017. As there was no response from the first respondent, a reminder was also sent, which was replied to by the respondent contending that they had spent about US$ 320,000 to promote

the channels and the said amount along with deposit of US$ 92,000 should be re-paid to the first respondent by the applicant. As the first respondent had made untenable claim contrary to the agreement, the agreement had not mentioned about the promotional activities in the territory. The first respondent also did not raise any issue relating to loss of Revenue and never requested the applicant to reduce the licence fees while making amendments to the agreements. According to the applicant, the first respondent is in huge arrears of licence fees and they are not justified in distributing the television channels to the applicant in the territory without paying the agreed licence fees and without performing its obligations under the contract.

6. It is also stated by the applicant that the applicant is entitled to terminate the agreement with notice under Clause 7(I) of the Addendum No.22 dated 19.12.2012 if there is any default of payment of monthly licence fees for two consecutive months. Accordingly, a termination notice was also issued to the first respondent on 12.09.2017. As the first respondent continued to downlink the signal of applicant's channels within the territory of United States of America, despite the termination of the agreement, the first respondent is liable for damages. Therefore, the applicant issued a notice on 06.12.2018 calling upon the respondents 1 and 2 forthwith to pay the arrears of licence fees along with interest and damages and also to cease and desist from down-linking the channels of the applicant. As the agreement dated 18.03.2010 stipulates that any litigation between the parties shall be at the City of Chennai, the applicant has come up with these applications seeking for the reliefs stated supra.

7. Resisting the claim of the applicant, the respondents filed a common counter affidavit contending

that the applicant did not have any intention of promoting any channel. It is further contended that the applicant had not made any payment to the respondents towards the default revenue as stipulated in the agreement. It is also contended by the respondents that serious damages had been caused to them due to the act of the applicant and the applicant had also caused disruption in other business interest by damaging their reputation and goodwill. However, the respondents had categorically admitted in the counter that they are entitled to raise dispute, claim and damages from the applicant under the jurisdiction of U.S.Courts and also before the Courts in India. According to the respondents, as the applicant had been indulging in highly unethical and unprofessional activities, they are not entitled for any relief as prayed for.

8. Originally, an order of interim injunction was granted for a period of four weeks as prayed for and it was periodically extended.

9. The following facts need to be noted in the instant applications:

(i) The applicant entered into an agreement on 18.3.2010 with the first respondent - the 'TV Broadcast Rights and Licensing Agreement' for the exclusive distribution of the applicant’s channels.

(ii) The said agreement was amended by way of addendum on 27.10.2010 imposing certain restrictions and reducing the minimum guaranteed licence fees payable by the first respondent.

(iii) On 19.12.2012 again the agreement was amended by way of another addendum with reduction of minimum guaranteed monthly licencing fees.

(iv) Again on 15.02.2017 a subsequent addendum was sought to renew the earlier agreement on the agreed terms thereon.

(v) On 27.07.2017 the first respondent had expressed its inability to continue the distribution and requested the applicant to terminate the agreement and addenda.

(vi) As requested and decided, a draft termination agreement was prepared by the applicant and the same was sent to the first respondent for approval through the mail dated 01.08.2017.

(vii) On 21.8.2017, the agreement was terminated and a demand of USD 3,13,222/- was made.

(viii) On 12.9.2017 a notice was sent by the applicant intimating that the revival of the agreement can be done on payment of USD 313,222 within 30 days.

(ix) The applicant also sent another notice on 06.12.2018 to the first respondent calling upon the first respondent from illegally broadcasting and distributing the channels of the applicant.

(x) The applicant also sent a notice seeking appointment of arbitrator to resolve the disputes.

10. The applicant has sought for an Anti-Suit Injunction restraining the respondents from initiating or prosecuting any claim, action or Arbitral Proceedings against the applicant in any Court other than the Courts in chennai. It is stated that the first respondent is attempting to file a suit in the courts at USA claiming damages against the applicant.

11. Admittedly, after the agreement was executed on 18.03.2010 there were addenda to the same, the last of which was on 15.02.2017, and the same provides for dispute redressal mechanism, which specifically states that the rights of the parties are to be determined in accordance with the laws of India without regard to conflict of laws, or principles thereof of the territory and the courts in Chennai alone will have jurisdiction to entertain and

resolve any dispute arising from the addenda and its previous agreement.

12. As, admittedly, the contract is an International Commercial one, more courts than one have jurisdiction over the subject matter. However, by a specific agreement, the parties have agreed beforehand to approach for resolution of their disputes to the courts in Chennai and thereby created an exclusive jurisdiction in Chennai by their choice. Though it is a well settled principle that by agreement the parties cannot confer jurisdiction, the said principle does not apply when the parties agreed to submit to the exclusive jurisdiction of courts in Chennai. Thus, it is clear that the applicant and the respondents have agreed to have their disputes resolved exclusively within the courts in Chennai. While so, apprehending that the respondents may initiate action against the applicant in the courts in the USA, the anti suit injunction has been sought for. No doubt the parties have agreed for the exclusive jurisdiction of courts in Chennai.

13. Albeit, while determining the criteria as to the more appropriate forum, the court has to see which forum had the cause of action, most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on the business.

14. Normally the court will give effect to the intention of the parties, as expressed in the agreement entered into by them except when strong reasons justify disregard of the contractual obligation of the parties.

15. The Hon'ble Supreme Court in the case of **Modi Entertainment Network and Others V. W.S.G. Cricket PTE Ltd., AIR 2003 SC 1177,** has propounded its principles for

grant of anti-suit injunction, which are as follows :

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects :

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court ;

(b) if the injunction is declined, the ends of justice will be defeated … ; and

(c) The principle of comity i.e., respect for the court in which the commencement or continuance of action or proceeding is sought to be restrained, must be borne in mind ;

(2) …...

(3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals there-in in regard to exclusive jurisdiction of the court of choice are not determinative but are relevant factors and when the question arises as to the nature of jurisdiction agreed to between the parties, the court has to decide the same on a true interpretation of the contract on the facts and circumstances of each case."

16. In the case on hand, the parties have specifically agreed to the jurisdiction of the courts at Chennai, even in the first agreement dated 18.03.2010, which was executed at Chennai and also the subsequent addenda to the said agreement. As the parties were conscious of choosing their forum, the respondent cannot be permitted to approach the court of its choice. Besides, the burden of establishing that the forum of the choice is a forum non-conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending and also to prove the same.

17. It is relevant to point out that in the counter affidavit, para J, the respondent has averred as follows :

> "It is respectfully submitted that the serious damage has been caused due to the above mentioned acts of the applicant and the applicant is still continuing to do so, hence the respondents are entitled to raise this dispute and to claim damages from the applicant under the US laws and under the jurisdiction of US courts and before the Hon'ble court of law in India also."

18. The learned counsel for the applicant placed reliance on the following decisions :

18.1. In ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.***, **(2017) 7 SCC 678**, the Hon'ble Supreme Court has held as follows :

> "19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment

"seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32. This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744 is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly."

18.2. The Hon'ble Supreme Court in Brahmani River Pellets Limited V. Kamachi Industries Limited, 2019 SCC OnLine SC 929, held thus :

"17. The inter-play between "Seat" and "place of arbitration" came up for consideration in the case of Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. (2017) 7 SCC 678. After referring to

BALCO, Enercon (India) Limited v. Enercon GMBH (2014) 5 SCC 1 and Reliance Industries Limited v. Union of India (2014) 7 SCC 603 and also amendment to the Act pursuant to the Law Commission Report, speaking for the Bench Justice Nariman held as under:—

> "18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO (2012) 9 SCC 552 judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.
>
> 19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. <u>Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration</u>

clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

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[**underlining added**]

18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed

that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

19. When the parties have agreed to have the “venue” of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside."

18.3. Earlier, in **O.N.G.C. V. Western Co. of North America, (1987) 1 SCC 496,** it has been held by the Hon'ble Apex Court that,

"18. In the result we are of the opinion that the facts of this case are eminently suitable for granting a restraint order as prayed by ONGC. It is no doubt true that this Court sparingly exercises the jurisdiction to restrain a party from proceeding further with an action in a foreign court. We have the utmost respect for the American Court. The question however is whether on the facts and circumstances of this case it would not be unjust and unreasonable not to restrain Western Company from proceeding further with the action in the American Court in the facts and circumstances outlined earlier. We would be extremely slow to grant such a restraint order but in the facts and circumstances of this matter we are convinced that this is one of those rare cases where we would be failing in our duty if we hesitate in granting the restraint order, for, to oblige ONGC to face the aforesaid proceedings in the American Court would be oppressive in the facts and circumstances discussed earlier. But before we pass an appropriate order in this behalf, we must deal with the plea that the High Court does not have the jurisdiction to grant such a restraint order even if the proceeding in the foreign court is considered to be oppressive. Counsel for the respondent has placed reliance on Cotton Corporation of India v. United Industrial Bank (1983) 4 SCC 625 in support of this plea. In Cotton Corporation case (1983) 4 SCC 625, the question before the court was whether in the context of Section 41(b) of the Specific Relief Act, the court was justified in granting the injunction. The said provision runs thus:

> "41. An injunction cannot be granted—
>
> (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;"
>
> (emphasis added)

This provision, in our opinion, will be attracted only in a fact-situation where an injunction is sought to restrain a party from instituting or prosecuting any action in a court in India which is either of co ordinate jurisdiction or is higher to the court from which the injunction is sought in the hierarchy of courts in India. There is nothing in Cotton Corporation case (1983) 4 SCC 625 which supports the proposition that the High Court has no jurisdiction to grant an injunction or a restraint order in exercise of its inherent powers in a situation like the one in the present case. In fact this Court had granted such a restraint order in V/O Tractoroexport, Moscow v. Tarapore & Company (1969) 3 SCC 562 and had restrained a party from proceeding with an arbitration proceedings in a foreign country (in Moscow). As we have pointed out earlier, it would be unfair to refuse the restraint order in a case like the present one for the action in the foreign court would be oppressive in the facts and circumstances of the case. And in such a situation the courts have undoubted jurisdiction to grant such a restraint order whenever the circumstances of the case make it necessary or expedient to do so or the ends of justice so require. The following passage extracted from para 1039 of Halsbury's Laws of England, Vol. 24, at p. 579 supports this point of view:

> "With regard to foreign proceedings, the court will restrain a person within its jurisdiction from instituting or prosecuting proceedings in a foreign court whenever the circumstances of the case make such an interposition necessary or expedient. In a proper case the court in this country may restrain a person who has actually recovered judgment in a foreign court from proceeding to enforce that

> judgment. The jurisdiction is discretionary and the court will give credit to foreign courts for doing justice in their own jurisdiction."

It was because this position was fully realized that it was argued on behalf of the respondent that the action in the US Court could not be considered as being oppressive to ONGC. We have already dealt with this aspect and reached a conclusion adverse to Western Company. There is thus no merit in the submission that the High Court of Bombay has no jurisdiction in this behalf."

19. On the other hand, learned counsel for the respondents relied on the judgment of the Hon'ble Apex Court in **Asian Resurfacing of Road Agency Private Limited V. Central Bureau of Investigation, (2018) 16 SCC 299,** which is not relevant and inapplicable to the facts of the present case.

20. From the above analysis, it is clear that the courts in the US cannot have jurisdiction in breach of Arbitration Clause agreed to by the parties. Admittedly, it is an international commercial arbitration. It is stated by the learned counsel for the applicant that steps have been taken for appointment of arbitrator. In the absence of the arbitral tribunal being constituted, this court has jurisdiction to grant an anti-suit injunction.

21. So far as the other relief sought for by the applicant is concerned, already there is an interim order operating against the respondents restraining them from downlinking or telecasting any of the program of the

channels or its contents run by the applicant either at USA or any other territory. When the contract has been terminated and the notice was also issued by the applicant giving an opportunity to the respondent to revive the agreement, in the absence of any efforts to revive the agreement, the respondents cannot continue to enjoy the privileges granted under the agreement. Hence, the applicant is also entitled to the discretionary relief of injunction as sought for. However the said injunction can be in force only for a period of eight weeks from the date of receipt of a copy of this order, within which the arbitral tribunal has to be constituted.

22. It is open to the applicant to move the arbitral tribunal under section 17 for any further relief.

23. These applications are allowed to the extent indicated above. The parties shall bear their own costs.

Sd/- PSNJ
25.10.2019

// Certified to be true copy//
Dated at Madras this day of 2019.

Court Officer(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.
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NK-08.11.2019

O.A. Nos.277 and 278 of 2019

ORDER :-

DATED: 25.10.2019

THE HON'BLE MRS.JUSTICE
PUSHPA SATHYANARAYANA

FOR APPROVAL:14/11/2019

APPROVED ON:14/11/2019