

O.A.No.428 of 2019**PUSHPA SATHYANARAYANA, J.**

The application is filed seeking an order of interim injunction restraining the respondent, their men, agents, etc., from acting in pursuance of the letter dated 07.02.2019 issued by the respondent to the application for termination of dealership agreement dated 24.04.2018 pending arbitral proceedings between the parties.

2. Heard Mr.A.V.Arun, learned counsel appearing on behalf of the application and Mr.V.V.Sivakumar, learned counsel appearing on behalf of the respondent.

3. The case of the applicant is that it is one of the dealers of the respondent and there was a dealership agreement, which was extended periodically. The last fresh Dealer Sales and Service Agreement was entered into on 24.04.2018 (in short, "DSSA") between the parties. The respondent vide letter dated 07.02.2019 called the applicant for a review meeting on 15.02.2019, wherein, it is stated by the respondent that it has the right to take appropriate action including termination of the DSSA. According to the applicant, they were orally informed by the respondent on 15.04.2019 that the

termination process is initiated. It is the further case of the applicant that a termination order was passed on 15.04.2019 giving the termination with effect from 17.08.2019 and it was communicated by e-mail on 16.04.2019 at 3.30 p.m., and the copy dispatched through courier was received by them only on 20.04.2019.

4. It is claimed by the applicant that Clause 84 of the DSSA provides for dealer to seek termination by giving 120 days notice. The respondent may terminate the agreement by giving 120 days notice under Clause 84.2. of the Agreement. Clause 106 provides for Dispute Resolution amicably and if no settlement is reached by consultations and negotiations within 30 days, then such dispute will have to be finally settled by arbitration.

5. Resisting the claim of the applicant, a counter-affidavit has been filed by the respondent on 26.04.2019, wherein, it is stated that as per Clause 84, the effective date of termination should be at least 120 days from the date of notice, which was duly complied with by the respondent by giving effect to the termination order from 17.08.2019. The respondent also claimed that the applicant has not taken any steps to invoke the arbitration till the time of filing the counter.

6. Learned counsel for the applicant contended that contrary to the clauses contained in the DSSA, the termination order was passed on 16.04.2019 dating back it to 15.04.2019 after this Court passing the interim order of injunction, which is evident from the fact that it was e-mailed only at 3.30 p.m. on 16.04.2019 and the postal courier sent on that day was received by the applicant only on 20.04.2019. It is also contended that when Clause 84 of the DSSA, more particularly, sub-clause (2), mandates 120 days notice for terminating the contract, the respondent cannot resort to pass the termination order on 16.04.2019 under the guise of giving effect from 17.08.2019, which could be resorted to only upon the expiry of 120 days notice.

7. Be that as it may, now the parties, by mutual consent, appointed Hon'ble Mr. Justice K.P. Sivasubramaniam, a retired Judge of this Court as Arbitrator. The learned Arbitrator also consented for arbitration and fixed the preliminary hearing on 17.06.2019. In such circumstances, this Court is of the view that it is open to the parties to make their respective claims before the learned Arbitrator and get their reliefs determined.

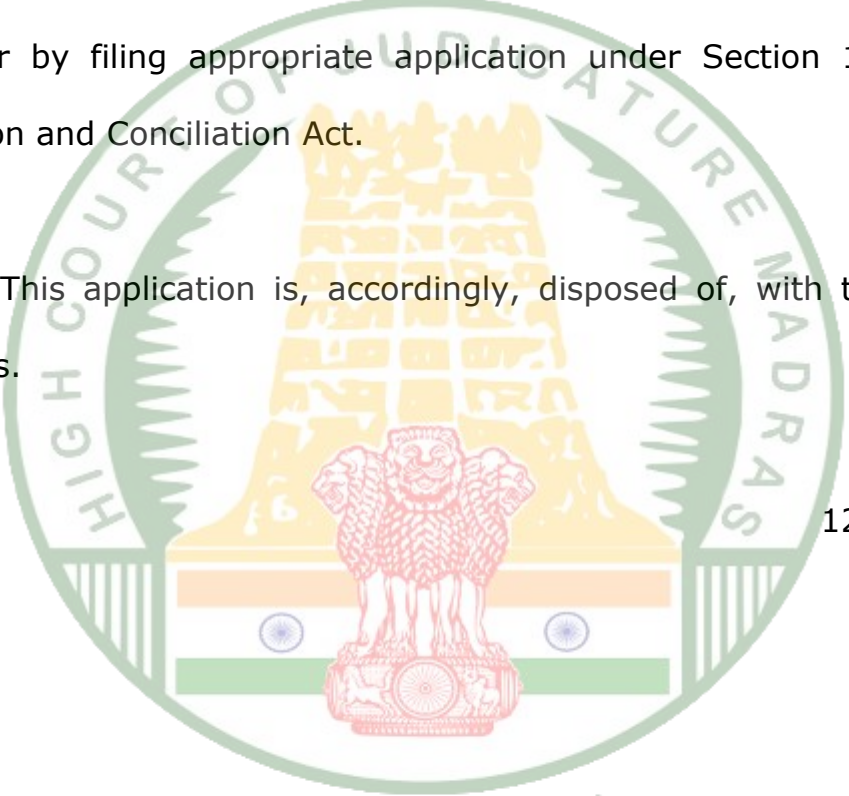
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8. In the light of the above discussions, the interim order of injunction granted by this Court is extended till 17.06.2019. It is open to the parties to make their respective claims before the learned Arbitrator by filing appropriate application under Section 17 of the Arbitration and Conciliation Act.

9. This application is, accordingly, disposed of, with the above directions.

12.06.2019



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