

O.A.Nos.13 and 14 of 2020
&
A.Nos.159 and 160 of 2020

M.SUNDAR,J.

This common order will dispose of these four applications.

2.Mr.K.V.Kartik Subramanian, learned counsel on record for applicant in all these four applications and Mr.R.Veeraraghavan, learned senior counsel, instructed by Mr.Chetan Sagar of M/s.Dua Associates (Law Firm) on record for sole respondent are before this Court.

3.Read this in conjunction with and in continuation of earlier orders being order dated 10.01.2020 in O.A.No.14 of 2020, another common order on the same day i.e., 10.01.2020 in O.A.No.13 and A.Nos.159 and 160 of 2020 as well as orders / proceedings dated 30.01.2020 made in the last listing in all these four applications, which read as follows:

'Proceedings dated 10.01.2020 in O.A.No.14 of 2020

Instant application is pivoted on Clause 106 (captioned 'Dispute Resolution') of an agreement between the applicant and respondent captioned 'Dealer Sales and Service Agreement' dated 24.04.2018 (hereinafter 'said agreement' for the sake of brevity, clarity and convenience).

2. Aforementioned clause 106 of said agreement is an

arbitration clause and therefore, Mr.S.R.Raghunathan, learned counsel representing the counsel on record for applicant submits that this clause 106 of said agreement is the arbitration agreement between the parties i.e., applicant and respondent. To be noted, 'arbitration agreement' within the meaning of Section 7 of 'The Arbitration and Conciliation Act, 1996, (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity.

3. This Court is informed that said agreement is for a period of five years and is due to elapse only on 30.04.2023.

4. Suffice to say that said agreement is for the applicant to act as dealer of the respondent, who is an Auto mobile manufacturer and dealership is inter-alia for sale / service of auto mobiles manufactured by respondent and sale of spares for the same.

5. It is submitted by learned counsel for applicant that one and half years into the operation of said agreement, applicant was called by the respondent to go over to Gurgaon to undertake what is described as 'retail sale performance review'. It is submitted that the applicant's response to this led to some turbulence qua said agreement, resulting in an electronic mail dated 10.09.2019 from the applicant to the respondent. The critical component (if one may say so, considering the matter on hand) of this electronic mail reads as follows:

'We wish to resign from the Dealership of FORD from Mumbai. Please Guide as way ahead.'

6. Adverting to the above and the language in which it is couched, learned counsel submitted that it is not a termination of said agreement, but only an expression of the state of mind of the applicant at that point of time. Learned counsel also submitted that the respondent quickly sent a reply the next day i.e., on 11.09.2019

treating this as termination, but on the same day, the applicant sent another electronic mail dated 11.09.2019 rescinding his position qua 10.09.2019 electronic mail.

7. Adverting to the above communication exchanged between the applicant and the respondent, learned counsel for applicant submitted that there are two aspects of the matter and they are as follows:

a) *There is no termination by the applicant, but only an expression of his state of mind on that day.*

b) *aforesaid expression of mind at that particular point of time was also rescinded inter alia on the ground that it was owing to stress which the applicant was under.*

8. With regard to manifest intention to arbitrate, learned counsel for applicant drew the attention of this Court to a communication dated 20.12.2019 from the applicant to the respondent (through Advocate), which has been duly received by the respondent on 27.12.2019. Most relevant paragraph is paragraph 6, which reads as follows:

'6. I therefore state and submit that, dispute with respect to the said agreement has arisen and therefore submit that the dispute resolution in terms of the clause 106 of the said agreement needs to be invoked. I therefore request you to hold consultation and negotiation in good faith in terms of the clause 106.1 of the said agreement. I therefore submit that, the said consultation/negotiation would be without prejudice to the dealer's rights under any law for the time being in force in India and any other rights under the said agreement.'

9. It is submitted that aforementioned paragraph 6 is in tune and tandem with the procedure for dispute resolution more particularly clause 106.1. It is emphasised that respondent having

received the communication on 27.12.2019 has not chosen to either respond or reply until this day.

10. Notwithstanding the language in which prayer in instant application is couched, learned counsel, at the hearing, submitted that it will suffice if the applicant is given interim protection restraining the respondent from acting on the aforesaid 10.09.2019 electronic mail, which has since been rescinded.

11. Prima facie case has been made out as applicant has rescinded the 10.09.2019 electronic mail, balance of convenience gravitates towards grant of interim order as continuing the dealership which has been in operation for one and half years can be favoured and preferred qua abrupt discontinuation and it follows as a sequiter that irreparable legal injury incapable of compensation is likely to occur, if there is abrupt discontinuation particularly when the exit clause in the agreement itself provides for a 120 days period window. To put it differently, the three cardinal parameters for grant of interim injunction, namely prima facie case, balance of convenience and irreparable legal injury incapable of compensation prima facie weigh in favour of acceding to the limited prayer of the applicant.

12. Request for aforementioned limited interim prayer injuncting / restraining respondent from acting on 10.09.2019 electronic mail from applicant (which has been since rescinded) is acceded to and this interim protection shall be in vogue till the next listing, which shall be on 27.01.2020. Issue notice to respondent returnable by 27.01.2020.

13. As this Court is yet to put in place Rules under Section 82 of A and C Act, I borrow the principle from 'The Code of Civil Procedure, 1908' ('CPC' for brevity) and direct the applicant to comply with Order XXXIX Rule 3 of CPC.

List on 27.01.2020.'

'Proceedings dated 10.01.2020 in O.A.Nos.13 of 2020 and A.No.159 and 160 of 2020

Issue notice to respondent returnable by 27.01.2020. Private notice is also permitted.

List on 27.01.2020.'

'Proceedings dated 30.01.2020 in O.A.Nos.13 and 14 of 2020 and A.Nos.159 and 160 of 2020

Mr.S.R.Ragunathan, learned counsel on behalf of applicant and Mr.R.Veeraraghavan, learned senior counsel instructed by Mr.Chetan Sagar, on behalf of sole respondent are before this Court.

2.After some submissions on both sides, learned counsel on both sides submitted that it would be desirable to explore the possibility of an amicable settlement by the parties sitting across the table. On instructions, it is submitted by both sides that this exercise will commence tomorrow (31.01.2020) and every endeavour will be made to conclude the same within a week therefrom i.e., on or before 06.02.2020.

List under the caption 'FOR REPORTING SETTLEMENT' on 07.02.2020.'

4. To be noted, there is no dispute or disagreement that 10.01.2020 order as in Paragraph 12 thereof is construed to continue and is operating.

5. Today, aforesaid counsel for applicant and learned senior counsel for respondent submit that the parties did have a dialogue for exploring the possibility of settlement, but the same could not be crystallized and concluded. However, it is submitted by both sides in unison in one voice that the applicant as well as the respondent in all these four applications have agreed on a sole Arbitrator to constitute the Arbitral Tribunal for entering upon reference, adjudicating and passing an award qua arbitral disputes that have arisen with regard to Dealer Sales and Service Agreement dated 24.04.2018 between the applicant and respondent in all these four applications.

6. With regard to appointment of Arbitrator, going by the ***Duro Felguera*** and ***Mayavati Trading*** principles laid down by Hon'ble Supreme Court in ***Duro Felguera, S.A. versus Gangavaram Port Limited*** reported in ***(2017) 9 SCC 7291*** and ***Mayavati Trading Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman*** reported in ***(2019) 8 SCC 7961*** judgment, it will suffice if this Court is prima facie satisfied about the existence of an arbitration agreement between the parties. In the instant case, there is no disputation or contestation between the parties about the existence of an arbitration agreement, which is in the form a clause 106 in aforementioned Dealer Sales and Service agreement dated 24.04.2018 .

7. Therefore, appointment of a sole arbitrator with the consent of both sides, has become a fairly simple task. There is no legal impediment in doing the same. Both sides submit that they have taken the consent of Hon'ble Tmt.Justice Chitra Venkataraman (Retd.,) at New No.31, Old No.17-B, IV Main Road, Raja Annamalaipuram, Chennai - 28, (Mob No.98409 90000) for being nominated as sole arbitrator to constitute the Arbitral Tribunal in this matter, details of which have been alluded to supra.

8. This takes us to the interim order made by this Court on 10.01.2001 in O.A.No.14 of 2020, which has been extracted and reproduced supra in this order. To be noted, this interim order is now construed to be operating and has been honoured.

9. Both sides submit that aforementioned learned Arbitrator has consented to have the first sitting/session on 13.02.2020. It is also submitted that the calender of learned Arbitrator does not permit Ladyship to sit before that. Therefore, interim order granted on 10.01.2020 in O.A.No.14 of 2020 will continue to operate till 13.02.2020 or the first sitting of the Hon'ble Arbitral Tribunal, whichever is later.

10. Before this Court crystallises the order and sets out the same, it is made clear that the trajectory in the instant applications as well as orders/proceedings are owing to the peculiar facts and circumstances of instant case, more particularly owing to a exit communication which was subsequently recinded. Therefore, this order will not serve as a precedent for similarly placed parties in similar dealership/sales and service agreements.

11. For the sake of convenience, clarity and specificity, summation of this order is given and the same is as follows:

a) Hon'ble Tmt.Justice Chitra Venkataraman (Retd.,) at New No.31, Old No.17-B, IV Main Road, Raja Annamalaipuram, Chennai - 28, (Mob No.98409 90000) is appointed as sole Arbitrator by consent, for entering upon reference, adjudicating arbitral disputes that have arisen between the parties and pass an award qua Dealer Sales and Service Agreement dated 24.04.2018;

b) Interim order dated 10.01.2020, made in O.A.No.14 of 2020 will continue to operate till 13.02.2020 or first sitting of the Arbitral Tribunal, whichever is later;

c) Learned Arbitrator /ladyship is free to fix arbitral fees and venue;

d) This order will not serve as a precedent qua similar

dealer/sales and service agreement for reasons alluded to supra
elsewhere in this order;

e) It is open to both sides to present photo copies of the pleadings in instant applications before Hon'ble Arbitral Tribunal and make a request to treat the same as an application under Section 17 of A and C Act. If this course is adopted, though obvious, it is made clear that Hon'ble Arbitral Tribunal will decide the plea (s) under Section 17 on its own merits untrammelled by any observations made in the earlier proceedings or instant order.

All four applications are disposed of on above terms.

07.02.2020

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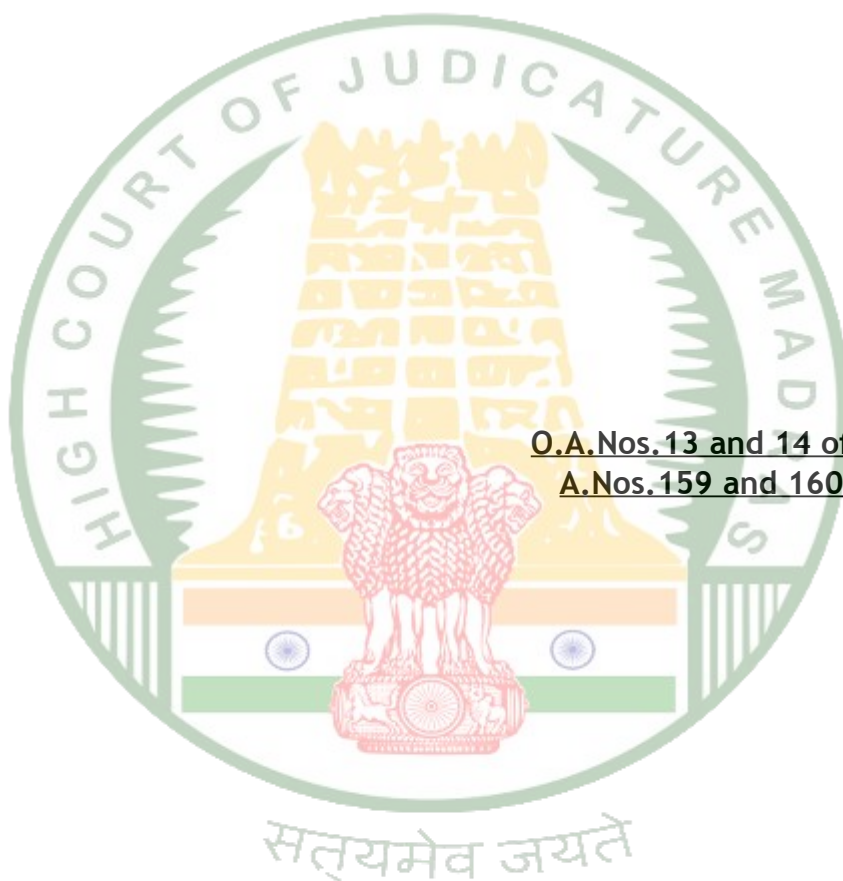
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