

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.04.2021

Pronounced on : 26.04.2021

CORAM

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

OA No.54 of 2021

M/s.Saboo Cars Pvt. Ltd.,
Rep. By its Authorized Signatory,
Ms.Aruna Rajesh,
having its registered office at
3-5-141/2, Edengarden Ramkote,
Hyderabad – 500 001.

... Applicant

Vs.

M/s.Hyundai Motor India Ltd.,
rep. By its Authorised Signatory,
having its registered office at
Plot No.H1, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumbudur Taluk,
Kancheepuram District,
Tamil Nadu – 602 105.

... Respondent

Prayer: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 9(1)(ii)(e) of Arbitration and Conciliation Act, 1996,

praying to grant an interim injunction restraining the respondent, its men, agents, and any person acting on its behalf of respondent herein, from acting upon and giving effect to the termination letter dated 12.01.2021, pending disposal of adjudication of disputes between the parties.

For Applicant : Mr.R.Shiva
for Mr.Anirudh Krishnan

For Respondent : Mr.T.R.Rajagopalan, Sr. Advocate,
for M/s.Surana and Surana.

ORDER

The applicant herein, is the authorised dealer selling and servicing Hyundai products in Hyderabad. He has moved this application under Section 9(1)(ii)(e) of Arbitration and Conciliation Act, 1996, for the following relief.

“to grant an interim injunction restraining the respondent, its men, agents, and any person acting on its behalf of respondent herein, from acting upon and giving effect to the termination letter dated 12.01.2021, pending disposal of adjudication of disputes between the parties.”

Applicant's case:

2. The applicant is a private limited company incorporated in 2013, under the Companies Act, 1956. They are the authorised dealer selling and servicing the Hyundai products. The respondent is also a company, incorporated

under the Companies Act, 1956. The respondent is engaged in the business of manufacturing, selling and servicing Hyundai automobile range, accessories, spare parts etc.

3. The applicant is a part of Saboo Motors Group, which was founded in 1973 and was a leading dealer for Kinetic Engineering Limited and Kinetic Motor Company Limited. Taking into consideration of previous experience, the respondent appointed the applicant as an authorised dealer to sell and service the Hyundai products. The applicant and respondent entered into a dealership agreement dated 10.07.2014 for non-exclusive dealership at Hyderabad, for a period of three years i.e., till 09.07.2017. From the year 2014 to 2016, the applicant achieved over and above the targets set by the respondent. For example, it achieved 132%, 108% and 106% of the target through sale of vehicles from its showroom at Mettugunda in 2014, 2015 and 2016, respectively. The applicant has also demonstrated growth in line with or exceeding the market average for service and spare parts.

4. In 2017 and 2018, the business of the applicant along with almost all automobile dealers across the country was hit by numerous external hurdles / obstacles such as demonetization, GST etc. During that time, the applicant received emails from the respondent requesting an investment plan for owned premises to reduce rent burden and increase profitability. The applicant's performance on different parameters, are recognised and appreciated by the respondent from time to time. Further, the applicant has been conferred numerous awards by the respondent for meeting / achieving targets year after year, viz., ***Interactive Workshop 2015 – Best Overall Performance South, CATI Top performer of the Year – 2016, Best Showroom Preparedness and Launch Award for i20 Active – South 2015, Best YOY Growth Award – 2017, Order Retail Volume Growth – 2017, Best Performance in Service Operations RO Growth 2018 in South Zone, Institutional Certification – 2018, etc.***

5. Despite the applicant's determination and focus to deliver on targets like they have done in the past, the applicant was hit by certain unforeseen and unanticipated circumstances viz.,

- (i) Worst ever recession in the automobile industry in 2019.
- (ii) Disruption from Covid-19 pandemic,
- (iii) Abrupt stoppage of property registrations in Telangana

6. The above mentioned incidents had happened beyond the control of the applicant. The applicant is fully committed, willing and ready to execute / implement the plans laid down in the replies to the show cause notices – infuse the requisite funds, bridge the funding gap, deploy the necessary manpower, improve sales performance and enhance consumer satisfaction.

7. The applicant has invested huge sums of money and established two showrooms and two service centres / workshops. A Security Deposit of Rs.10 lakhs were made in terms of the Dealership Agreement and nearly 250 employees were engaged exclusively for the said dealership, providing jobs / employment and livelihood to the families. Between the year 2014 to 2021, substantial investments of approximately Rs.7 Crores have been made on infrastructure by the applicant apart from investments towards maintenance of showrooms / service centres and

purchase of property for showroom and workshop. The applicant has also raised various loan facilities by way of overdraft facilities with banks and other financial institutions to fulfill the obligations under the Dealership Agreement.

8. The applicant received its first Show Cause Notice on 23.01.2020, pointing out poor performance in sales, inventory funding, manpower and non-adherence to standard operational procedure in operations and the same was suitably replied on 30.01.2020. The applicant addressed the fund gap immediately on the receipt of the first Show Cause Notice and infused approximately Rs.11 Crores from January 2020 to March 2020 by selling its properties. Despite, infusing the funds, the agreement for one of the showroom viz., Digital Sales Outlet at Trimulgherry, was terminated hastily and arbitrarily by the respondent in February 2020.

9. Subsequent to that the applicant received the second Show Cause Notice dated 25.07.2020 from the respondent pointing out certain deficiencies with regard to inventory funding, non-performance in sales, manpower, etc. The

applicant responded to the second Show Cause Notice vide its letter dated 31.07.2020 and also subsequently gave multiple updates regarding infusion of funds. The respondent then issued the third Show Cause Notice dated 31.12.2020, again calling out poor performance in sales, lack of inventory funding, customer complaints, manpower shortage etc.

10. The applicant replied to the third Show Cause Notice vide its letter dated 06.01.2021 informing the respondent that it has made tremendous progress in reducing the inventory funding outstanding from Rs.22.5 Crores as on 01.01.2020 to Rs.2.19 Crores as on 01.01.2021. Additionally, the applicant also infused Rs.16.01 Crores by selling its properties and from its personal funds. The applicant highlighted the difficulties, which it was facing due to the outbreak of the Covid-19 pandemic and prolonged lockdowns coupled with slow market conditions and also requested the respondent for support in the form of a comfort letter to ensure that the banks release the sanctioned funds under inventory funding of Rs.10 Crores and sales can be accelerated.

11. On 12.01.2021, to the utter shock and dismay of the applicant, the respondent issued the Termination Letter giving a thirty-day notice to the applicant in terms of Clause 13.1 of the Dealership Agreement following which the Dealership Agreement and Letter of Intent dated 27.10.2015 shall stand terminated on grounds of failure to infuse funds. The applicant replied to the said Termination Letter vide its response letter dated 22.01.2021.

12. Under these circumstances, the applicant is now approaching this Court for the grant of urgent interim reliefs, restraining the respondent from giving effect and acting upon the Termination letter dated 12.01.2021, which will cause irreparable and irreversible injury to the applicant.

13. The applicant also submits that it has a manifest intent to arbitrate and is in the process of initiating arbitration proceedings against the respondent for the breaches committed by it and will be commencing the arbitration proceedings in accordance with the provisions of the Act and clause 11 of the Dealership Agreement.

Counter of the Respondent:

14. Originally, the parties entered into a Dealership Agreement dated 10.07.2014 for Non-exclusive dealership at Hyderabad and the parties acted upon the said Dealership Agreement. The original Dealership Agreement was renewed only upto 09.07.2020. Thereafter, the said Dealership Agreement was not renewed. Apart from the said Dealership Agreement, a Go-Ahead Letter and Letter of Intent was issued by the respondent to the applicant, which are as follows;

- a) Go-Ahead letter dated 11th September 2015 for established Non-exclusive Dealer Sales Outlet (DSO) at Trimulgherry, Hyderabad (S 5000).
- b) LOI dated 27.10.2015 for Non-exclusive Dealer Service Branch at Ranigunj, Hyderabad.

15. Both HMIL and Dealer are entitled to terminate this agreement by giving 30 days' notice. The dealership agreement is determinable in nature. Since the contract between the applicant and respondent, is in the nature of determinable contract, in view of Section 14(1)(d) of the Specific Relief (Amendment) Act, 2018 (Previously Section 14(1)(c) of the Specific Relief Act, 1963), the same is not specifically enforceable. Therefore, the relief sought for in the present applicant is

clearly barred by Section 14(1)(d) of the Specific Relief (Amendment) Act. Thus, the application filed under Section 9 of the Arbitration and Conciliation Act, 1996, is not maintainable in law.

16. As far as the business is concerned, since 2019, this respondent has on several occasions been calling upon the applicant to make good the huge deficiency arising out of the lack of infusion of funds, the sales conversion ratio, manpower and adhere to the Standard Operational Procedure in Operations. The respondent has given a long rope and had awaited for several months with the hope that the applicant would rectify the shortcomings and live up to the requirements of the respondent's dealership in the prime areas of Andhra Pradesh. Since the notice of termination was issued on 12.01.2021, same would take effect from 11.02.2021. In otherwise, the applicant failed to achieve its 100% target in 2020. Till November 2020, the respondent had given sufficient time and opportunities, which were not utilised by the applicant.

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17. After the issuance of termination notice, the applicant transferred Rs.1.75 Crores on 19.01.2021, whereas, the Termination Notice was issued on

12.02.2021. Hence the respondent vide e-mail dated 20.01.2021 informed the applicant that they are in the process of returning the said amount. The applicant has admitted in e-mail dated 03.10.2020 that it has been unable to place any order and had to turn away bookings for more than 150 cars due to non-infusion of funds. Therefore, after knowing all these things, the respondent was not in a position to give comfort letter to the banks for release of sanctioned funds as the applicant has time and again made only false promises and representation to the respondent.

18. The prayer sought in the application is not maintainable and also the same is contrary to the Specific Relief Act. Termination has been done only as per the terms of the agreement entered into between the applicant and the respondent and therefore, the application filed by the applicant is liable for dismissal.

Rejoinder of the applicant:

19. In response to the counter affidavit, the applicant has filed a rejoinder in which he reiterated the averments found in the application which was filed under Section 9 of the Arbitration and Conciliation Act, 1996. He had denied the

entire averments found in the counter affidavit filed by the respondent. It is their contention that the legal issue as to whether the dealership is terminable is an issue which has to be decided by arbitration and therefore, till such time, the contract cannot be terminated.

Submissions:

20. Mr.K.Shiva, the learned counsel appearing on behalf of the applicant would contend that the applicant company, a dealer under the respondent, are doing the dealership activities from 10.07.2014. After entering into the dealership agreement, he has progressed his business every year. Only due to the current pandemic situation, the applicant is not able to achieve the target. He would further submit that since the agreement entered into between the applicant and the respondent, is a Non-exclusive one, until the conclusion of arbitration proceedings, if the dealership stands in the name of applicant is cancelled, it would cause much prejudice to the applicant. Further, being a reputed dealer, his name is also spoiled and thereby, prima facie case has arisen in favour of the applicant.

21. Learned counsel for the applicant would further submit that the termination of the dealership would only be on the grounds given in the letter of intent. A reading of the third Show Cause Notice dated 31.12.2020, would indicate that the respondent intended to terminate the dealership for the following reasons.

- (i) Non-performance in sales.
- (ii) Lack of Inventory funding
- (iii) Customer complaints
- (iv) Manpower
- (v) Test Drive Cars.

He would contend that these grounds are not in keeping with the grounds for termination mentioned in the Letter of Intent.

22. The learned counsel would further submit that in replies dated 30.01.2020, 31.07.2020 and 06.01.2021, the applicant herein has categorically held that they are having sufficient funds to run the dealership as per the norms quoted in the Dealership Agreement. Further, it was specifically mentioned that the applicant is not able to buy vehicles and achieve the targets as the bankers have not only reduced their limits from Rs.2250.00 lakhs to Rs.1060.00 lakhs, but also kept their limits on hold. Only due to Covid-19 pandemic and the commencement

of lock down, and slow market conditions prevailed till July, the business has not improved. In this regard, the applicant made an assurance for fulfilling the obligations of the respondent and requested to give a comfort letter to the extent of collateral given to the HDFC bank, as per the bank valuation.

23. The learned counsel would submit that the respondent has not taken into consideration the long standing relationship and the assurance of the applicant that they would infuse additional funds from the banks in and by which the business could be brought on line.

24. The learned counsel would rely upon the judgment of our Hon'ble Apex Court in *Adhunik Steels Limited Vs. Orissa Manganese and Minerals (P) Limited*, reported in 2007 (7) SCC 125, wherein our Hon'ble Apex Court has observed as follows:

“21..... it was open to the court to pass an order by way of an interim measure of protection that the existing arrangement under the contract should be continued pending the resolution of the dispute by the arbitrator.”

25. Per contra, Mr.T.R.Rajagopalan, learned senior counsel appearing on

behalf of the learned counsel for the respondent would contend that once the contract is determinable then under Section 14 (1) (c) of the old act which is now the amended Section 14 (1) (d) of the Specific Relief Act, there cannot be a direction to the respondent to continue to supply the vehicles. He would rely upon Section 41 (e) of the Specific Relief Act, to state that even under the provisions of this section, an injunction cannot be granted to the applicant. He would submit that with open eye, the applicant herein entered into contract with the respondent and pursuant to such an agreement, the supplies have continued from the year 2015 onwards.

26. The learned senior counsel would further submit that there has been two extensions of dealership agreement and under the present agreement, no reason was required to be given for terminating the contract. Despite giving several assurances right up to the time of filing the present application, the applicant had not been in a position to regularise the business. Though, he had given an undertaking for infusing sufficient

funds, due to paucity of funds, the respondent is not able to carry out the supplies and ultimately, the supply of vehicles to the applicant had been stopped. To substantiate the contentions raised, the learned senior counsel would rely upon the following judgments.

1. **(1980) 2 MLJ 398** – K.M.Madhavakrishnan Vs. S.R.Sami and Ors.
2. **1991 (1) ARBLR 97 (SC)** – Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and others.
3. **1993 (1) MLJ 259** – K.Varadhan Vs. Pattammal and Ors.
4. **MANU/DE/0586/1998** – Classic Motors Limited Vs. Maruti Udyog Limited.
5. **AIR 2000 Delhi 450** – Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company.
6. **2000 (3) ARBLR 316 (SC)** – E.Venkatakrishna Vs. Indian Oil Corporation and others.
7. **2008 (1) ARBLR 113 (Madras)** – Bharat Petroleum Corporation Limited Vs. Rajarajeswari Agency and others.
8. **AIR 2007 SC 2144** – Arvind Constructions Co. Pvt. Ltd. Vs. Kalinga Mining Corporation and others.
9. **AIR 2007 SC 2563** – Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd.
10. **2009 (6) R.A.J.631 (Del.)** - M/s.Bharat Catering Corporation Vs. Indian Railway Catering and Tourism Corp. Ltd.
11. **2009 (4) ARBLR 39 (Delhi)** – R.P.S.Educational Society Vs. Delhi Development Authority.
12. **2011 (6) R.A.J.623 (Del.)** - MIC Electronics Limited & Anr Vs. Municipal Corporation of Delhi & Anr.
13. **2011 (6) R.A.J. 238 (Del.)** - Cox and Kings India Ltd. Vs. India Railway Catering and Tourism Corporation Ltd.
14. **2012 (6) ALLMR 357** – Nimbus Communications Limited Vs. Board of Control for

Cricket in India and others.

15. **2012 (94) ALR 16** – Samay Singh Vs. Hindustan Petroleum Corporation Ltd. and others.
16. **2012 (1) R.A.J. 681 (Del.)** - VF Services (UK) Limited Vs. Union of India & Anr.
17. **AIR 2014 Raj 1** – Raj. Rajya Vidyut Utpadan Nigam Ltd. Vs. Manglam Cement Ltd.
18. **2014 (4) ARBLR 348 (Delhi)** – Planet M. Retail Ltd. Vs. Select Infrastructure Pvt. Ltd.
19. **2015 (6) ARBLR 340 (Madras)** – Gammon – OJSC Mosmetrostroy JV and others Vs. Chennai Metro Rail Limited and others.
20. **2015 (6) R.A.J. 490 (Del)** – Jindal Steel and Power Limited Vs. M/s.SAP India Pvt. Ltd.
21. **2018 (2) ARBLR 433 (Madras)** – Indian Oil Corporation Ltd. and others Vs. Bhagawan Balasai Enterprises and others.
22. **2018 (2) ARBLR 50 (Delhi)** – Parsoli Motors Works Private Limited Vs. BMW India Private Limited.
23. **28.02.2019 – Madurai Bench of Madras High Court** – NLC Tamil Nadu Power Limited Vs. MIS. Sical Logistics Limited.
24. **2020 (1) ARBLR 250 (Delhi)** – *single Judge* – Inter Ads Exhibition Pvt. Ltd. Vs. Busworld International Cooperative.
25. **2020 (2) ARBLR 497 (Delhi)** – *Division Bench* – Inter Ads Exhibition Pvt. Ltd. Vs. Busworld International Cooperative

Discussion:

27. Now, on considering the either side submissions with relevant records, it seems that the main and substantial relief in the present application is that not to give effect to the Termination Letter dated 12.01.2021, pending disposal of adjudication of disputes, between the

applicant and the respondent. Since the contention of the respondent is that the prayer sought by the applicant is bad in law, it is necessary to decide whether the prayer sought by the applicant is maintainable under law.

28. According to the respondent, the contract entered into between the applicant and the respondent, is a determinable one. For verifying the same, it is necessary to see the background of relationship between the applicant and the respondent. Originally, on 10.07.2014, as a first time, the applicant and the respondent entered into a Dealership Agreement for a period of three years. Subsequent to that, after completion of three years, on 10.07.2017, the Dealership Agreement dated 10.07.2014, was renewed for a further period of three years, till 09.07.2020. In the said circumstances, in respect to termination, in the Dealership Agreement dated 10.07.2014, it was stated as follows:

“13. TERMINATION OF AGREEMENT:

13.1. Both HMI and DEALER are entitled to terminate this agreement by giving 30 days notice. No reasons whatsoever need be stated by the party giving notice of termination and it is sufficient if the notice conveys the intention of the

party to terminate this agreement.

13.2. Without prejudice to HMI's rights under clause 13.1 above, HMI is entitled to terminate this Agreement after serving seven (7) days' notice in writing to the DEALER in the event of the DEALER's failure to duly comply with sub-clauses 4.3 to 4.10 herein above.”

Therefore, from the reading of the said clause, it is made clear that the contract is a determinable one.

29. In these circumstances, under Section 14(1)(d) of the Specific Relief (Amendment) Act, 2018 (Previously Section 14(1)(c) of the Specific Relief Act, 1963), if the nature of the contract is a determinable one, the same is not specifically enforceable.

30. Here it is a case that the respondent terminated the contract not in a single day. Prior to the termination, on three occasions, viz., 23.01.2020, 25.07.2020 and 31.12.2020, he had sent Show Cause Notices to the applicant, wherein, he had pointed out the difficulties which has to be rectified by the applicant. Though the said Show Cause Notices were suitably replied by the applicant, it is the admission made by the applicant that due to Covid-19 pandemic and other circumstances, the growth of automobile industries have fallen down and

therefore, the sales of cars also dropped down.

31. The respondent has not only indicated the poor performance of sales, but, apart from the poor performance, the respondent has specifically indicated that the applicant herein, suffers from lack of inventory funding, customer complaints, manpower and test drive cars. Therefore, it is very clear that from the month of April 2016 onwards, the applicant has not been in a position to achieve the norms agreed by him and obtain a success rate till the termination of dealership. It is not in dispute that both the parties are bound by the terms of agreement. Further, the records would indicate that the applicant was not able to fulfill their obligations despite sufficient time being granted to them as is evident from their reply notice sent to the respondent.

32. In the judgment in **Indian Oil Corporation Ltd. Vs. Amristar Gas Service and others**, reported in **1991 (1) SCC 533**, our Hon'ble Apex Court, when at the time of considering the correctness of termination of distributorship, has held as follows:

“This finding read along with the reasons given in the award clearly

accepts that the distributorship could be terminated in accordance with the terms of the Agreement dated 1.4.1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the Agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of Sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with the reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

33. Further in a case of ***Bharat Petroleum Corporation Limited Vs. Rajarajeswari Agency and others***, reported in (2007) 6 MLJ 525, the Division Bench of this Court has upheld the termination of the distributorship on the ground that the distributorship agreement was determinable in nature and further held that

restoration of the distributorship was not possible.

34. In yet another judgement in ***Parsoli Motors Works Private Limited Vs. BMW India Private Limited***, reported in **2018 (168) DRJ 650**, the Delhi High Court, while at the time of considering the non-renewal of the dealership agreement, after discussing the various judgment on the point, held that the issue involved in the said proceedings is covered by the provisions of Section 14 of the Specific Relief Act and observed as follows:

“Yet another reason, why, in my opinion, no case for entertaining the present petition exists, is that, even assuming the decision of the respondent, not to renew the contract with the petitioner, suffers from any illegality, the petitioner could be adequately compensated by damages, should it choose to initiate any action in this regard. Applying clauses (a) and (c) of Section 14 of the Specific Relief Act, therefore, no case for injuncting the respondent, from acting on its decision not to renew the contract with the petitioner, is made out, as grant of any such relief would amount to specific enforcement, at the interim stage, of the agreement between the petitioner and respondent, which is determinable in nature;

further, inasmuch as the case of the petitioner is that it had mobilised considerable resources, and incurred considerable expenditure, in setting up and operating its distributorship, the grievance of the petitioner could adequately be redressed by compensation, should the contentions of the petitioner be finally found to be acceptable. The principle that a contract, which is determinable in

nature, should not be directed to be specifically enforced as, even if the contract is enforced, it could be terminated immediately, would apply, on all fours, to the present case as well. On this ground, too, no justification, for grant of any interim injunction, as prayed for by the petitioner, can be said to exist in the present case.”

35. Further, on going through the various judgments relied on by the learned senior counsel appearing on behalf of the respondent, I am of the considered opinion that if the contract is a determinable one, the party cannot seek to have the contract enforced in the light of Section 14 of the Specific Relief Act. The only remedy available to the applicant is to approach the competent forum and seek compensation in the form of damages. More than that, Section 41(e) of the Specific Relief Act, prevents this Court from granting injunction, in these type of disputes.

36. In this regard, the Delhi High Court in ***Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company***, reported in **AIR 2000 Delhi 450**, has held as follows:

“Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any

reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same.”

37. Further, by relying on the above referred judgments, this Court while at the time of deciding A.Nos.1901 and 1902 of 2020, on 23.12.2020, in an identical situation dismissed the applications filed by the applicant therein and refused to grant injunction.

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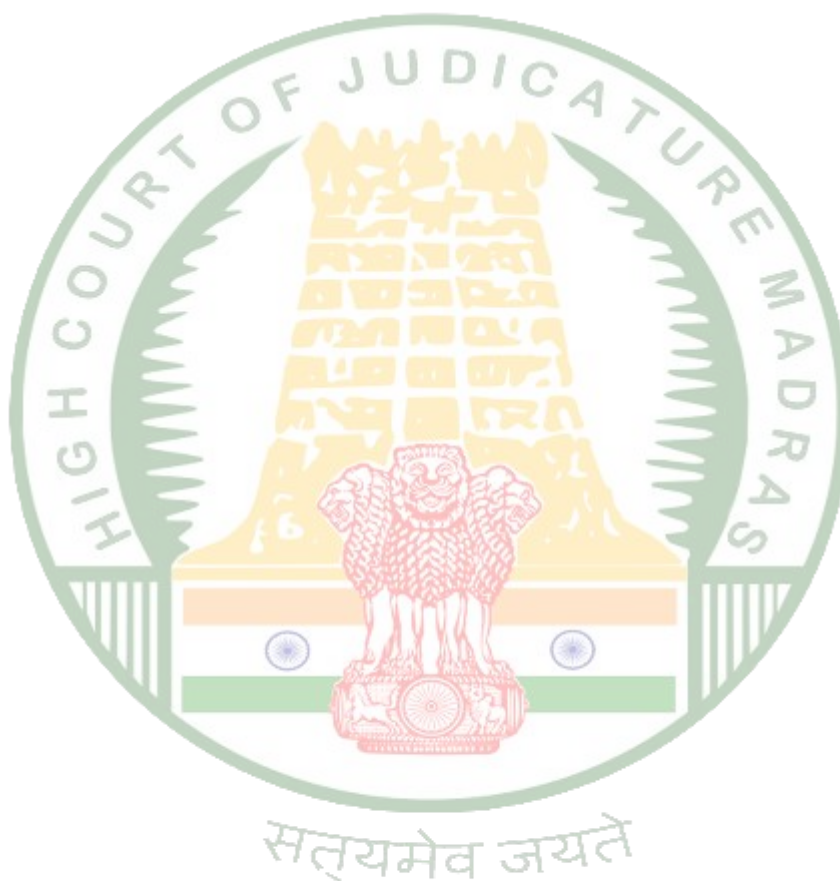
38. Therefore, I am of the considered opinion that the applicant has not made out a prima facie case for grant of an order of injunction in their favour.

Further, the balance of convenience is on the side of the respondent alone.

Accordingly, the application in O.A.No.54 of 2021, is dismissed.

26.04.2021

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R.PONGIAPPAN, J.

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Pre-delivery order in
OA No.54 of 2021

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