



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11th DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.A.No.460 of 2021

In the matter of Arbitration and Conciliation
Act, 1996

And

In the matter of Arbitration disputes between
M/s. Sugam Vanijya Holdings Private
Limited and Maha Sports Design Apparels
Private Limited,

In the matter of Settlement agreement dated
14.08.2019.

Maha Sports Design Apparels Private Limited,
Represented by its Director,
D.Dayakar,
Registered office at:
Mohanarangam Apartments,
Flat No.A2, Old no.117 New No.122,
Habibullah Road,
T.Nagar, Chennai 600 017.

...Applicant

-Versus-

Sugam Vanijya Holdings Private Limited,
VR Bengaluru, Plot No.118,
Sy.No.40/9, Dyvasandra Industrial Area Stage II,
KR Puram, Hobli, Bengaluru 560 048.

... Respondent

Original Application praying that this Hon'ble Court be pleased to

grant an order of interm injunction restraining the Respondent or their



representative from interfering with the peaceful running of Applicant's store named "JOCKEY", situated at First Floor of the Mall named "VR-Chennai", Koyembedu, Chennai and the electricity to be restored, so as to enable the applicant from running the shop "JOCKEY" peacefully.

This Original Application coming on this day before this court for hearing in the presence of Mr.AR.L.Sundaresan, Senior Counsel for M/s.Vijayan Subramanian, M.V.Bhaskar, A.Murali and R.S.Suriya, Advocates for the Applicant herein, and Mr.Sathish Parasaran, Senior Counsel for Mr.R.Parthasarathy, Advocates for the Repondent herein and upon reading the Judges Summons and the Affidavit of D.Dayakar filed herein and having observed that this Court is of the view that when the parties have agreed to a particular place, as the seat of arbitration, entire process of arbitration has to be commenced in the Court, including any processing under Section 9 of the Arbitration and Conciliation Act, 1996, that the Agreement entered between the parties has a specific clause for having the arbitration proceedings at Delhi, the present Original Application is not maintainable and the same is liable to be dismissed,

it is ordered as follows:-

That the O.A.No.460 of 2021 be and is hereby dismissed.

2. That the parties hereto have entered into an agreement and

applicant was inducted into possession legally, he shall not be thrown out,



without due process of law and the applicant herein shall be at liberty to approach the concerned Court, for appropriate relief, within a period of three weeks, from the date of receipt of a copy of this order.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
11th DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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31.08.2021

O.A.No.460 of 2021

ORDER

DATED : 11.08.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 17.09.2021

APPROVED ON: 20.09.2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 11th DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

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In the matter of Arbitration and Conciliation
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Original Application praying that this Hon'ble Court be pleased to

grant an order of interm injunction restraining the Respondent or their



representative from interfering with the peaceful running of Applicant's store named "JOCKEY", situated at First Floor of the Mall named "VR-Chennai", Koyembedu, Chennai and the electricity to be restored, so as to enable the applicant from running the shop "JOCKEY" peacefully.

This Original Application coming on this day before this court for hearing, The Court made the following order:

This Original Application has been filed to grant an order of interim injunction, restraining the respondent from interfering with the peaceful running of applicant's store named "JOCKEY", situated at First floor of the mall, viz., "VR-Chennai", Koyambedu, Chennai and electricity to be restored, so as to enable the applicant from running the shop "JOCKEY" peacefully.

2. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.Vijayan Subramanian for the applicant and Mr.Sathish Parasaran, Senior Counsel for Mr.R.Parthasarathy for the respondent.

3. The applicant is a franchise of the well known brand JOCKEY. The applicant engaged in the business of operating retail stores, under the brand JOCKEY in India. The respondent approached the

applicant to take a space on lease, in the Mall, bearing Unit No.F-32, on the



first floor, admeasuring approximately 2512 sq.ft of super built up area.

The applicant and respondent entered into a Memorandum of Understanding, dated 2/2/2018, for the purpose of recording their mutual understanding as to the terms and conditions of the proposed lease. The lease commenced only during August 2018. As per the Memorandum of Understanding, the applicant had paid a sum of Rs.50,000/-, as refundable deposit at the time of delivery of possession towards the completion of interior works. As per Clause 5.1 of the Agreement, the rent is fixed at Rs.4,77,280/-, as minimum guarantee rent.

4. The applicant has already filed an application, in O.A.No.220 of 2019, under Section 9 of the Arbitration and Conciliation Act, 1996, seeking a direction not to interfere with the business of the applicant. After hearing the detailed arguments of both parties, this Court has ordered thus:-

“19. So far as the lease deeds are concerned, admittedly, they are not registered, though the same are compulsorily registerable. Though the lease deeds will not affect the immovable property, which is the subject matter, the document will not be received as evidence, when it



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is not registered.

23. In the case on hand, it is stated that the respondent had not handed over the signed documents. Therefore, the respondent is directed to handover the signed lease deeds to the applicant within a period of a week from the date of receipt of a copy of this order, after which, the applicant is directed to present it before the registering authority concerned for registration by paying requisite stamp duty and get it registered within a period of four weeks thereafter. Once registration is done, it will cure the defects in the documents and the same can be received in evidence and the arbitration clause also can be invoked as stipulated therein.

24. The applicant is directed to continue to pay 70% of the rent amount agreed upon, without any default, till such time, the lease deeds are registered and thereafter, application under Section 17 of 1996 Act is filed in resolving the disputes, after initiating arbitration proceedings. As the respondent is receiving the rents, though not as



reminders, even in the month of June, 7, 14, 21, 22, 28/6/2021, etc., the applicant had failed to make the outstanding payment to the respondent and as such, the respondent had no other choice but to disconnect electricity, under Clause 14.5 (a) of the Lease Deed.

8. It is further stated in the affidavit that the applicant owes to the respondent a sum of Rs.54,11,148/-, under various heads, such as rent charges, electricity charges, interest on late payment etc. Despite repeated reminders, the applicant did not come forward to pay the amounts due to the respondent by the applicant. Moreover, Clause 6 (b) provides for “New Delhi” to be the seat of arbitration. The applicant has misrepresented Chennai to be the “seat of arbitration”.

9. As the very jurisdictional issue has been raised by other side, Mr.Sathish Parasaran, learned Senior Counsel for Mr.R.Parthasarathy, appearing for the respondent vehemently submitted that in the agreement itself it is clearly indicated that the seat of arbitration is at Delhi. Once parties have agreed for a particular place/jurisdiction, to entertain any application, arbitral proceedings would lie where the seat is fixed. Hence submitted that the present application under Section 9 of the Act, is not maintainable before this Court.



10. Whereas it is the contention of the learned counsel appearing for the applicant that though the seat of arbitration is fixed, application filed under Section 9 of the Arbitration and Conciliation Act, seeking interim relief, High Court, exercising Civil jurisdiction, can decide the issues forming in the subject matter of the arbitration. As per Clause 2 (e) (ii) of the Act, the definition of the Court is very clear that the Court can decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit. Hence, the application filed for interim relief can be entertained before this Court.

11. It is his further contention that as per the agreement, applicant is entitled to possession, the applicant cannot be thrown out. Previously, the applicant has moved before this Court, on the basis of Memorandum of Understanding entered into between the parties, whereas the respondent has not taken any objection as to the jurisdiction and memorandum is followed by settlement agreement. Therefore, it is the contention that this Court is having jurisdiction to entertain this application.

12. Dispute has been raised as per the agreement, dated 14/8/2019. Clause 6 of the agreement is as follows:-



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Governing Law and Dispute Resolution

(a). The validity, construction and performance of this Agreement shall be governed and interpreted in accordance with the laws of India with competent Courts at Chennai having exclusive jurisdiction in this regard.

(b). If any question of difference or claim or dispute shall arise between the parties hereto touching these presents or the construction thereof to rights, duties or obligations of the parties hereto or as to any matter arising out of or connected with the subject matter of these presents, the same shall be referred to the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and amendments. The seat of arbitration shall be New Delhi. The reference shall be to a sole arbitrator to be appointed mutually. The arbitrator shall render the award in English language and in writing. The parties agree to abide by the decision of the arbitrator, which shall be final and binding.”



13. In this regard, the Hon'ble Supreme Court in

BALAPREETHAM GUEST HOUSE PVT. LTD rep. BY ITS
AUTHORISED SIGNATORY Mr.ARUNJITKAURKOHLI Vs. MY
PREFERRED TRANSFORMATION AND HOSPITALITY PVT. LTD
(2021 SCC Online Mad 1126), has held as follows:-

“29. In the case on hand there are two
inconsistent and conflicting clauses. They are:

i) This agreement shall be governed and
interpreted in accordance with the laws of India and
the Courts at Chennai shall have exclusive
jurisdiction in all matters arising out of this
agreement.

ii) Where any disputes arise between
parties in respect of or in connection with the
agreement then parties shall first endeavour to
conciliate the disputes failing which the same shall
be referred to arbitration to be conducted by a sole
arbitrator. The place of arbitration is at New Delhi.



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30. Considering the apparent conflict in respect of these 2 clauses the two have to be harmoniously constructed to give meaning to both. The rule of harmonious construction is to harmonise and not to destroy and while interpreting the clauses Courts have to presume that the parties had inserted every clause thereof for a purpose and therefore attempt to give effect to both. A reading of the 2 clauses would indicate that the parties had agreed that in case of a cause of action arising from out of the agreement then the Courts at Chennai alone will have jurisdiction, if parties abandon their right to arbitrate the dispute and file a civil suit.

31. However, the latter clause viz; 10.2 and 10.3 relates to disputes between the parties arising out of or in connection with the agreement and parties have agreed to resolve their disputes through Arbitration and have agreed that the seat of such Arbitral proceedings will be New Delhi.

Therefore, the two clauses can be harmoniously constructed without one doing violence to the other.



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32. Even if we were to assume that the two clauses are in conflict with each other the same can be resolved by considering the law laid down by the Supreme Court. The Hon'ble Supreme Court has in the judgements referred above placed importance on the juridical seat to confer jurisdiction on Courts in the case of Arbitration Proceedings. In the Judgement in *BGS Soma* the learned Judges had held that the very fact that parties have chosen a place to be the seat necessarily implies that both parties have agreed that the Courts at the seat would have jurisdiction over the entire arbitral process. Therefore, on account of a conspectus of the above judgements of the Hon'ble Supreme Court, wherein emphasis and importance has been given to the juridical seat, in the instant case the Court having supervisory jurisdiction is the Courts where parties have agreed would be the place of arbitration.

**ANIKET SA INVESTMENTS LLC Vs. JANAPRIYA ENGINEERS****SYNDICATE PRIVATE LIMITED AND OTHERS (2021) 2 AIR Bom****R 443**, at paragraph Nos.37 to 39, held as follows:-

“37. In view of the law as clearly explained in *BGS SGS*, we are of the opinion that the Impugned Order in so far as it holds that paragraph 96 of BALCO recognizes concurrent jurisdiction of the ‘cause of action’ Court and the ‘seat’ Court cannot be sustained as it is not consistent with the judgment in *BGS SGS*. We are also unable to agree with the contentions of Respondent Nos. 3 to 6 in their written submissions that the judgment of *BGS SGS* does not apply to a situation such as the present case because it is an international commercial arbitration seated in India. The law as laid down in *BGS SGS* was in a situation where it was a domestic arbitration, and the ‘seat’ was held to be in Delhi and the cause of action in Faridabad. Therefore, it would be incorrect and contrary to the reading of the judgment itself to



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restrict the application of the law it lays down only to some situations and not others as has been contended by Respondent Nos. 3 to 6. On a reading of the entire judgment, we have no doubt that it clearly applies to the issue of whether there is concurrent jurisdiction of courts in a situation where the parties have chosen a 'seat' of arbitration irrespective of whether if it is a domestic arbitration or an international commercial arbitration seated in India such as in the present case.

38. Given that, *BGS SGS* has held that there is no concurrent jurisdiction of two Courts under Section 2(1)(e) of the Act, the principles applied by the Learned Single Judge that as a matter of party autonomy the parties can choose one of the two courts and confer exclusive jurisdiction on one of those Courts, by relying *inter alia* upon paragraph 96 of *BALCO* and the judgment in *Swastik Gases*, would have no application in a situation where the parties have chosen a seat of



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arbitration. A choice of seat, as the Supreme Court has explained, is itself an expression of party autonomy and carries with it the effect of conferring exclusive jurisdiction on the Courts of the seat.

39. We are also of the opinion that in view of the Supreme Courts reading and understanding of *Indus Mobile*, in the case of *BGS SGS*, the Impugned Order was not correct in distinguishing *Indus Mobile* only because of the clauses in the agreement in *Indus Mobile* conferring exclusive jurisdiction on the same Court as that of the seat. As the Supreme Court clearly notes, *Indus Mobile* gives two separate reasons for its conclusion and the first of them is that a choice of seat has the effect of conferring exclusive jurisdiction on the Court of the seat.”

15. In MY PREFERRED TRANSFORMATION AND HOSPITALITY PVT LTD Vs. SUMITHRA INN (2021 SCC ONLINE DEL 1536), has held that once the seat is fixed, the jurisdiction will be the place of seat.



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16. Similar view was taken in **INDUS MOBILE****DISTRIBUTION PRIVATE LIMITED CASE** (2017) 7 SUPREME

COURT CASES 678, wherein at paras 19 and 20 it is 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 Section 16 to 21 of the 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



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agreement between the parties.

20. *It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see **Swastik Gases Private Limited v. Indian Oil Corporation Limited**, (2013) 9 SCC 32. This was followed in a recent judgment in **B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited**, (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.”*

17. Three Judges Bench in **BGS SGS Soma JV vs. NHPC Ltd.**, {(2020) 4 SCC 234}, has held as follows:

“99. Given the fact that if there were a dispute between NHPC Ltd. and a foreign contractor, clause 67.3(vi) would have to be read as a clause designating the “seat” of arbitration, the same must follow even when sub-clause (vi) is to be read with sub-clause (i) of Clause 67.3, where the



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dispute between NHPC Ltd. would be with an Indian Contractor. The arbitration clause in the present case states that “Arbitration Proceedings shall be held at New Delhi/Faridabad, India...”, thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as “the Tribunal may meet”, or “may hear witnesses, experts or parties”. The expression “shall be held” also indicates that the so-called “venue” is really the “seat” of the arbitral proceedings. The dispute is to be settled in accordance with the [Arbitration Act, 1996](#) which, therefore, applies a national body of rules to the arbitration that is to be held either at New Delhi or Faridabad, given the fact that the present arbitration would be Indian and not international. It is clear, therefore, that even in such a scenario, New Delhi/Faridabad, India has been



proceedings.”

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18. Having regard to the above position, the parties having agreed to the seat of Arbitration at Delhi, this Court is of the view that once the parties agreed to have the proceedings at Delhi, this Court has no territorial jurisdiction to entertain the instant Original Application.

19. It is to be noted that merely because on an earlier occasion, this application has been filed on the basis of Memorandum of Understanding between the parties, interim order was passed and that cannot be a ground to hold that this Court have got jurisdiction to entertain the application. The parties have chosen their jurisdiction exclusively, as observed by the Hon'ble Apex Court in *INDUS MOBILE DISTRIBUTION PRIVATE LIMITED V. DATAWIND INNOVATIONS PVT. LTD., AND OTHERS [(2017) 7 SUPREME COURT CASES 678]*. By agreeing the seat of arbitration, merely on the basis of some interim order earlier obtained, on the basis of some other agreement, the jurisdiction cannot be confirmed on this Court.

20. Having gone to the above facts, this Court is of the view that when the parties have agreed to a particular place, as the seat of arbitration,



entire process of arbitration has to be commenced in the Court, including any processing under Section 9 of the Arbitration and Conciliation Act, 1996.

21. In the light of the above judgments and having regard to the fact that the Agreement entered between the parties has a specific clause for having the arbitration proceedings at Delhi, the present Original Application is not maintainable and the same is liable to be dismissed.

22. Accordingly, this Original Application is dismissed. Having regard to the fact that the parties have entered into an agreement and applicant was inducted into possession legally, he cannot be thrown out, without due process of law. It is well open to the applicant, to approach the concerned Court, for appropriate relief, within a period of three weeks, from the date of receipt of a copy of this order.

Sd./- N.S.K.J
11.08.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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