# THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on | Delivered on |
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| 22~10~2021 | 28 -10~2021 |

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

**O.A. No. 475 of 2021**

M/s. Embassy Services Private Limited,
Rep.by its authorised Signatory
Chandrasekar B.,
Having office at Floort, Embassy Point,
No.150, Infantry Road, Bangalore 560001. .. Applicant

.Vs.

M/s. Embassy Residency Apartment Owners Association,
Office at Embassy Residency,
Cheran Nagar, Perumbakkam,
Chennai 600100, Tamilnadu India.
Rep by its Secretary Mr.Om Karthik T.M. ... Respondent



**Prayer:** Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 to grant order of Interim Injunction, restraining the Respondent, its men, gents memebrs or anyone acting through or under the Respondent from terminating the Property Management Agreement dated 14.08.2015, between the Applicant and the Respondent, pending arbitration proceedings.

For Petitioner : Mr. Sathish Parasaran,
Senior Counsel for
Mr. G. Vivekanand

For Respondent : Mr. Palaniyandy

**ORDER**

This application has been filed for temporary injunction to restrain the respondent from terminating the Property Management Agreement dated 14.08.2015 entered between the petitioner and the respondent.

2. It is stated by the applicant that the agreement dated 14.08.2015 namely, Property Management Agreement, wherein the applicant has been appointed as a service provider for management and maintenance of the building and the term of the agreement is for a period of 15 years with effect from 01.01.2015. It is agreed as per clause 4.02 of the agreement that the consideration payable to the applicant is at the rate of 15% on the cost of maintenance including utility charges, electricity, water, diesel, insurance and statutory charges [management fees] and

the same is initially fixed for the first two years. Any increase in the percentage of management fees from the third year shall be agreed between the applicant and the respondent in writing on or before the first quarter of each financial year. The parties have also agreed for mode of payment of management fees. When the management fees at the rate of 15% was continuing, the respondent started negotiating the management fees and the prolonged negotiations lasted from 2019 to 2021.

3. When the matter stood thus, suddenly, after filing of this application, a letter dated 03.08.2021 was issued by the respondent for terminating the Property Management Agreement. Hence, it is the contention of the learned Senior Counsel that the termination notice itself is not according to law and the termination notice can be issued only as per Clause 4.04 of the agreement and the above clause makes it very clear that for issuing such notice atleast 120 days is required for terminating the agreement. When the services of the applicant is continuing, abruptly, such notice is issued and the respondent is trying to induct competitor in the business. Hence, prayed for interim injunction.

4. It is the case of the Respondent that the Respondent is the registered Association under the Tamil Nadu Societies Registration Act, 1975. Applicant is a sister concern of the developer cum builder of Embassy Residency Apartments. Common maintenance of Phase I was handed over to the respondent by M/s. RGE Constructions and Development Private Limited in the year 2017 and for the Phase-II it was handed over in the year 2018. The Applicant and the Respondent entered into a Property Management Agreement (PMA) on 14.08.2015, covering only the 4 blocks of Phase 1, well before the Respondent Association began with proper functioning. Hence, the Association was unable to negotiate proper tierms of the Property Management Agreement (PMA).

5. As per Clause 4.02 of the Property Management Agreement, the Respondent was to pay a management fee/service charges calculated @ 15% of the cost of maintenance excluding utility charges electricity, water, diesel, insurance and statutory charges. It is further his contention that Clause 4.04 provides for termination of service of the Applicant, by giving a notice of atleast 120 days. It is the contention that the applicant has failed to discharge his duty in a fair and proper manner and Clause 7 also provides for the termination by giving

a notice of 120 days.

6. From the year 2019, negotiations regarding fixing new management fee /service charges have failed and that as on date there is no written agreement between the Applicant Company and Respondent Association. In the light of the exorbitant demand of management fee/service charge, the association using its due right as per the agreement terminated the services of the applicant. It is the contention that the matter cannot be arbitrated particularly the excepted matter. It is the further contention that as per the Property Management Agreement Management fees/service charges has to be negotiated and agreed upon between the applicant and respondent.

7. Denying the entire allegations it is the contention that the agreement was signed in the year 2015 when the association was in its infancy and many of the members had yet to purchase an apartment in Embassy Residency project. Hence it is the contention that interim orders cannot be granted and the prayer sought for is not maintainable. Termination of the Agreement with the Applicant will not cause any prejudice to the Applicant.

8. Heard both sides.

9. It is not disputed by both sides that the agreement was entered between them on 14.08.2015 and the dispute mainly appears to be with regard to reduction of the percentage of the Management fees already agreed between the parties. Even in the counter, it is specifically stated in paragraph 8 that the Management fees/service charges has to be be negotiated and agreed upon in writing between the Applicant and Respondent, after the initial 2-year tenure. The agreement of reduction of Management fee from 15% to 10% was concluded at a time when the Applicant and its sister concern RGE had sway over the office bearers of the association.

10. The counter also indicated that the dispute is mainly arose after the election of the new office bearers. Clauses 4.04(iv) of the contract reads as follows:



*"4.04 (iv) In the event of ESPL falls to either cure*

*as detailed in caluse (ii) above or disagreee to enter into arbitration process as provided in clause 6 or above by the arbitrators finding on any matter referred for arbitration, as the case may be, notwithstanding anything to the contrary as contained elsewhere in this agreement, in full, by giving a written notice of atleast120 days."*

11. Similarly Clause 7 Termination reads as follows:

"7. TERMINATION

*The Client may terminate this contract in full by written notice to ESPL at any time during the contract period in event of lack of mutual agreement during review on Management Fee & cost structure by giving a notice of 120 days."*



12. Both the clauses provide termination by giving a notice of 120 days. Whereas the notice issued on 3.8.2021 indicate that the termination notice issued to wind up the operation within two weeks atleast by 14.8.2021, which is contrary to the very provisions containing in the agreement between the parties. The

dispute appears to be with regard to the fees and service charges originally agreed between the parties which has been sought to be reduced by the subsequent elected members. Such being the position, abrupt termination without following the contractual terms, cannot be permitted in the eye of law. Even assuming that the termination notice was issued on 3.8.2021 the termination period expires on 120 days as contemplated in the contract, the same cannot be given effect. Accordingly till the period of 120 days is over termination cannot be given effect. This Court is aware of the effect that there cannot be injunction terminating the Property Management Agreement, only the damages are available when the contract itself provides for a period of 120 days which has to be strictly followed.

13. In such a view of the matter, termination cannot be given effect till the termination period is expired. It is the contention of the learned counsel for the Respondent that the matter is not arbitrable, falls within the excepted matters. In this regard it is relevant to read Clause 6 of the Contract which is as follows:

*"**6. ARBITRATION AND JURISDICTION***

*All questions, disputes, differences and claims whatsoever which shall at any time arise between the* *parties hereto or their respective representatives or any of them touching or concerning this agreement and all othe4r documents in pursuance hereof or the construction, meaning, operation or effect thereof or of any clause herein contained or as to the rights, duties, obligations or liabilities of the parties hereto respectively or their respective representatives or any of them under or by virtue of this Agreement or otherwise or touching the subject matter thereof or arising out of or in relation thereto except disputes with respect to Management fee and cost structure shall be referable to the three members arbitral tribunal. However, disputes related to non-payment of maintenance fee by the client to ESPL, once agreed and signed off by both the two parties will be subject to arbitration. Each party shall appoint one arbitrator and these two arbitrators in turn shall appoint the Presiding Arbitrator in accordance with the provisions of the Arbitration and Conciliation*

*Act, 1996 as amended from time to time. Such arbitration proceedings shall be in English language and shall be held in Chennai only, Subject to the preceding paragraph the Courts in Channai shall have exclusive jurisdiction over any dispute, difference or claims arising out of this Agreement."*

14. On perusal of the same makes it very clear what is excepted matter is only Managemnet Fee and Cost Structure. However, the dispute relating to the non-payment of Maintenance Fee already agreed on the side of both parties will be subject to the Arbitration. In the counter statement as indicated in para 8, it is admitted that the dispute is only with regard to the already agreed price. Therefore, such dispute certainly can be referable under Clause 6.



15. In Such a view of the matter, the interim order granted by this Court is extended till the expiry of 120 days i.e., on 02.11.2021. It is for the Applicant to take appropriate steps to get the Arbitrator(s) appointed, as per law and seek further reliefs before the learned Arbitrator(s) as may be advised.

16. With the above observation the Application is disposed of.

**28.10.2021**

Index : Yes
Internet : Yes
Speaking/Non-Speaking order
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**N. SATHISH KUMAR, J.**
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Order in:
**O.A.No.475 of 2021**

**28.10.2021**