



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 20TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

Arb.Appln.No.208 of 2021

In the matter of Arbitration &
Conciliation Act, 1996

And

In the matter of Lease Deed dated
26.07.2018 between the parties.

Ayyappa Enterprises
Trading as M/s. CALONGE
Rep. By its Proprietor
Mr. Vimalan,
No.65, Nelson Manickam Road,
Aminjikarai,
Chennai – 600 029.

... Applicant

-Vs-

M/s. Sugam Vanijya Holdgins Private Limited,
Owners of “VR Chennai” Mall
Corporate office at No.44, Pillaiyar Koil Street,
Jawaharlal Nehru Road,
Anna Nagar,
Chennai – 600 040.

... Respondent

Application praying that this Hon'ble Court be pleased to pass an
order of interim measure of protection, to direct the Respondent to
restore the electricity supply with immediate effect to the Premises
situated at #44, Pillaiyar Koil Street, Jawaharlal Nehru Road, Anna



Nagar, Chennai – 600 040, admeasuring 1582 Sq.ft of Super built up Area, admeasuring 870 Sq.ft of Carpet Area bearing Unit No.G-51 on the Ground floor and further retrain from withholding the electricity supply or any other essential supplies/services.

This application coming on this day before this court for hearing in the presence of Mr.G.Kalyan Jhabakh for M/s. Surana and Surana, advocates for the applicant herein and Mr.Sathish Parasaran, Senior Counsel for M/s. R. Parthasarathy, advocates for the respondent herein and upon reading the Judges Summons and the affidavit of Vimalan filed herein and 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 and this Court has no territorial jurisdiction particularly, if from the agreement, different interpretations are drawn, as put forth by the learned counsel for the applicant that this court has jurisdiction, the same will amount to overriding of the judgment of the Apex Court, which is holding the field and having regard to the registered lease deed entered between the parties and the rents have been paid except for a few months, the respondent cannot take advantage on the point of the jurisdiction and



ED

21/10/2021

WEB COPY

4

Arb. Appln. No.208 of 2021

ORDER

DATED : 20.09.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 27.10.2021

APPROVED ON : 28.10.2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 20TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

Arb.Appln.No.208 of 2021

In the matter of Arbitration &
Conciliation Act, 1996

And

In the matter of Lease Deed dated
26.07.2018 between the parties.

Ayyappa Enterprises
Trading as M/s. CALONGE
Rep. By its Proprietor
Mr. Vimalan,
No.65, Nelson Manickam Road,
Aminjikarai,
Chennai – 600 029.

... Applicant

-Vs-

M/s. Sugam Vanijya Holdgins Private Limited,
Owners of “VR Chennai” Mall
Corporate office at No.44, Pillaiyar Koil Street,
Jawaharlal Nehru Road,
Anna Nagar,
Chennai – 600 040.

... Respondent

Application praying that this Hon'ble Court be pleased to pass an
order of interim measure of protection, to direct the Respondent to
restore the electricity supply with immediate effect to the Premises



situated at #44, Pillaiyar Koil Street, Jawaharlal Nehru Road, Anna Nagar, Chennai – 600 040, admeasuring 1582 Sq.ft of Super built up Area, admeasuring 870 Sq.ft of Carpet Area bearing Unit No.G-51 on the Ground floor and further refrain from withholding the electricity supply or any other essential supplies/services.

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

This Application has been filed for an order of interim measure of protection, to direct the respondent to restore the electricity supply with immediate effect to the premises situated at #44, Pillaiyar Koil Street, Jawaharlal Nehru Road, Anna Nagar, Chennai – 600 040, admeasuring 1582 Sq.Ft of Super built up Area, admeasuring 870 Sq. Ft of carpet Area bearing Unit No. G-51 on the Ground floor and further refrain from withholding the electricity supply or any other essential supplies/services.

2. Heard the learned counsel for the applicant and the learned senior counsel for the respondent.



3. Learned counsel for the applicant submitted that the applicant and the respondent had entered into a Registered Lease Deed (in short 'Lease Deed') dated 26.07.2018 and subsequently, addendums dated 26.07.2018 and 29.07.2019 to the Lease Deed were executed by the parties. The lease Deed and the addendums were executed for lease of space admeasuring 1581 Square feet of Super built up area, bearing Unit no. G-51 on the ground floor of the shopping mall called “VR-Chennai” situated at No. 44, Pillayar Koil Street, Jawaharlal Nehru road, Anna Nagar, Chennai-600 040 to run a retail store for selling/promoting leather bags, shoes, clutches, belt and accessories under the brand name “CALONGE”.

4. Learned counsel for the applicant further submitted that the Applicant has paid an advance amount of Rs. 30,17,969/- (Rupees Thirty lakhs seventeen thousand nine hundred and sixty nine only), towards interest free refundable security deposit, maintenance deposit, fit-out deposit, CAM deposit and utility deposit. Due to the outbreak of the COVID 19 pandemic, unforeseen and unprecedented situation faced by all businesses alike, the applicant had several discussions with the respondent to re-negotiate the terms and conditions of the Lease Deed. It

had been agreed between the respondent and the applicant that subject to



the clearance of all outstanding dues from 01.04.2020 to 31.08.2020, there shall be a complete waiver of the MGR(Minimum Guaranteed Rent) and only 80% of the agreed CAM (Common Area Maintenance) charges shall be payable by the applicant. While the negotiations were ongoing, without any prior information or notice to the applicant, the respondent on 28.06.2021, with an ulterior motive, unlawfully disconnected electricity for the premises.

5. Learned Senior Counsel for the respondent submitted that the arbitration clause clearly indicates that the seat of Arbitration is at New Delhi. Hence, this Court does not have jurisdiction to entertain this instant application.

6. Clause 16.7 of the Lease Agreement dated 26.07.2018 and Clause 23 of the Addendum dated 26.07.2018 reads as follows:-

16.7: Governing Law and Dispute Resolution:

(a) The validity, construction and performance of this Lease Deed shall be governed and interpreted in accordance with the laws of India with competent Courts at Chennai having the 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 to be held at New Delhi in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996. The reference shall be to a sole arbitrator. If the parties fail to appoint a sole arbitrator within 30(Thirty) days, then the dispute shall be referred to 3 (Three) arbitrators, with each party appointing 1(one) arbitrator and the two arbitrators so appointed appointing the third arbitrator. The arbitrator shall render their award in English Language and in writing. The parties agree to abide by the decision of the arbitrator, which shall be final and binding.”

Clause 47 of the addendum agreement dated 29.07.2019 reads as

follows:-



“ **47. Arbitration:**

(i). If any question of difference or claim or dispute shall arise between the Parties hereto touching these presents or the interpretation 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 (Indian) Arbitration and Conciliation Act, 1996.

(ii). The venue of the arbitration will be New Delhi.”

Though clause 16.7 of the lease agreement provides the seat of arbitration at Chennai, the addendum agreement dated 29.07.2019 shows the seat of arbitration at New Delhi.

7. The above clause makes it clear that arbitration should be held at New Delhi in accordance with the Arbitration and Conciliation Act and addendum to Lease Deed executed on 26.07.2018 except the change in arbitration seat, the rest of the lease deed holds good and fully enforceable.



8. He also submitted that in the similar case, this Court has already dismissed the original application in O.A. No. 460 of 2021 vide order dated 11.08.2021.

9. Learned senior counsel for the respondent relied upon the judgment in the case of *BGS SGS Soma JV vs. NHPC Ltd.*, {(2020) 4 SCC 234}, the relevant Paragraphs is extracted hereunder:

“82..... no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.



10. Similarly, in the case of MY PREFERRED TRANSFORMATION AND HOSPITALITY PVT. LTD VS. SUMITHRA INN {(2021) SCC ONLINE DEL 1536}, it is held as follows:

27.....“wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding. In the present case, contends Mr.Prabhakar, the conferment of exclusive jurisdiction at Bengaluru to decide disputes relating to the agreement between the parties, constitutes significant contrary indicia within the meaning of para 61 of ***BGS SGS Soma JV.***”

29.....*The Supreme Court has held that, in the absence of any “other significant contrary indicia”, the designation of a particular place as the venue of arbitration*



WEB COPY

designated such a place as the “seat” of the arbitral proceedings. If, on the other hand, there are other significant contrary indicia, which indicates that the “seat” of arbitration is not the “venue” as specified in the contract, the presumption of the venue being the seat would not apply. It is in this context that the Supreme Court has used the expression “and no other significant indicia” not to denote an exception to the principle that the seat of arbitration, as fixed in the contract, would confer supervisory jurisdiction of the Court.....”

11. Clause 23 of the addendum dated 26.07.2018 and lease deed dated 26.07.2018 and Clause 47 of the addendum dated 29.07.2019 indicate that the seat of arbitration is at New Delhi. From the various terms of contract agreed made by the parties, it is made clear that the parties have agreed for the seat of arbitration at New Delhi. Therefore, when the seat has been agreed and accepted on both sides, it cannot be said that this Court having jurisdiction at Chennai should arbitrate the matter.



12. In this regard, three Judges Bench in **BGS SGS Soma**

JV vs. NHPC Ltd., {(2020) 4 SCC 234}, has held as follows:

“97. 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 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



WEB COPY

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 designated as the “seat” of the arbitration proceedings.”

13. Having regard to the above position, the parties having agreed to the seat of Arbitration at New 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. This Court has no territorial jurisdiction particularly, if from the agreement, different interpretations are drawn, as put forth by the learned counsel for the applicant that this Court has jurisdiction, the same will amount to overriding of the judgment of the Apex Court,



14. Accordingly, this Court is of the view that the present application is not maintainable and the same is liable to be dismissed.

Having regard to the registered lease deed entered between the parties and the rents have been paid except for a few months, the respondent cannot take advantage on the point of the jurisdiction and disconnect the electricity. As this Court has dismissed the application on the point of jurisdiction, the same will not give license to the respondent to disconnect important amenities. Accordingly, the respondent is directed to restore electricity connection immediately. 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. Interim order shall operate only for a period of three(3) weeks from the date of receipt of copy of this order.

Sd./-N.S.K.J.
20.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.