



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

OSA (CAD) No.103 of 2021

and

CMP No.17990 of 2021

M/s Rohini Movie Park,
No.171/2, Poonamalli Road,
Koyembedu, Chennai - 600 107

...Appellant/Respondent

Vs

M/s TSR Films Private Limited,
No.15, 5th Cross Street, Lake Area,
Nungambakkam, Chennai - 600 034
Represented by Mr.R.P.Balamurugan,
Chief Executive Officer

...Respondent/Applicant

Appeal filed under Section XIII of Commercial Divisions and Commercial Appellate Division of the High Court Act, 2015 read with Order XXXVI Rule 11 of Original Side Rules against the Judgment and Order dated 15.09.2021 passed in O.A.No.76 of 2021 on the file of original side of this court.

Prayer in O.A.No.76 of 2021 : This petition filed under order XIV Rule 8 of O.S.Rules read with section 9(ii)(a)(e) of the Arbitration and conciliation Act 1996 this Hon'ble court may not be pleased to grant an order of injunction restraining the respondents its partners employees agent and anyone acting on their behalf from any manner exhibiting any digital content including but not limited to Movies Short Films Advertisement DAVPs and other digital exhibitions using any other Digital Cinema Equipment other than that of the Applicant as per Agreements dated 21/01/2016 and 10/12/2018 pending final adjudication of disputes between the Applicant and the Respondent through arbitration.

For the Appellant : Mr.Nithyaesh Natraj

For the Respondent : Mr.Dhanaram Ramachandran



J U D G M E N T
(Delivered by the Hon'ble Chief Justice)

The short grievance of the appellant is that the arbitration court may have gone against its earlier order in finally deciding on the ownership of a particular movable property in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996.

2. The appellant was the respondent in the initial proceedings instituted under Section 9 of the said Act by the respondent herein who had been engaged by the appellant for the purpose of supplying material for the appellant's theatre shows. Disputes arose between the parties as to the quality of service rendered by the respondent herein and the obligation of the appellant herein to make regular payments which culminated in the respondent invoking Section 9 of the said Act and seeking return of its goods and material.

3. A limited order was initially passed on August 10, 2021 in which it was observed that the matters as to which item belonged to which party would be required to be decided on protracted evidence and the same could be conveniently done in course of the arbitral reference. An Arbitrator was appointed by the consent of the parties, but an Advocate Commissioner was appointed for the purpose of making an inventory of all the items at the theatre hall with a direction on Advocate Commissioner to ensure that the items belonging to the respondent were permitted to be carried away by the respondent herein.

4. The immediate dispute pertains to a particular UPS instrument. According to the appellant, the UPS was not mentioned in the contract which is covered by the arbitration agreement and such instrument stands completely beyond the pale of the matrix contract governed by the arbitration agreement. The respondent, however, asserts that in view of the previous assurance given to the court when the initial order of August 10, 2021 was passed, the subsequent order of September 15, 2021 by which the UPS has been directed to be returned to the respondent cannot be questioned.

5. It is not necessary to go into the question of who owns the UPS or whether the respondent may obtain immediate return thereof. Since there is an issue between the parties as to the ownership of the relevant instrument and a further disagreement of whether the dispute is covered by the arbitration agreement itself, the matter must be left to the decision of the Arbitrator.



6. Accordingly, OSA (CAD) No.103 of 2021 is disposed of by keeping the order impugned dated September 15, 2021 in abeyance till December 15, 2021. It will be open to the parties to apply before the Arbitrator under Section 17 of the Act of 1996, in the meantime, for appropriate orders pertaining to the UPS. If either party carries such application to the Arbitrator, the Arbitrator will decide the same in accordance with law without being influenced by the observations in the order impugned herein dated September 15, 2021.

7. It is made clear that the rights of either party to the UPS have not been decided herein and the issue has been left for the decision of the Arbitrator, including as to whether such decision falls within the purview of the arbitration agreement. It will also be open to the Arbitrator to continue the present order of abeyance for any reasonable period for the purpose of adjudicating on the relevant issue.

CMP No.17990 of 2021 is closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

sra

To

The Sub Assistant Registrar
Original Side,
High Court,
Madras.

OSA (CAD)No.103 of 2021

AK-II(CO)
RGA(15/11/2021)