

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 15TH DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

O.A.No.419 of 2021
and
Arb.Appln.Nos.45 & 46 of 2021

In the matter of Section 9 of the
Arbitration and Conciliation Act of
1996

And

In the matter of the Arbitration
Agreement contained in Assignment
terms and the Authors Assignment
(Royalty) Schedule dated 16.02.2016

Deivanai Arunachalam
D/o Arunachalam, aged about 36 years,
C - 17, 4th Floor, Arcot Terrace,
Arcot Road, Vadapalani,
Chennai - 600 026

...Applicant
(In all applications)

versus

Macmillan Publishers India Private Ltd.
Represented by its Managing Director Mr. Rajesh Pasari
Having its registered office at
No.21, Patullos Road,
Chennai - 600 002

...Respondent
(In all applications)

O.A.No.419 of 2021:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction, restraining the Respondent, its Principals, their men, servants, agents or any person claiming through them from in any manner further printing, publishing, marketing or selling the book titled "MY BOOK OF GRAMMAR BOOK 1 TO 8" authored by Late Mrs. Valli Arunachalam, pending disposal of arbitration.

Arb.Appln.No.45 of 2021:-

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondent to render accounts to the Applicant in relation to the sales of the book titled "MY BOOK OF GRAMMAR BOOK 1 TO 8" authored by Late Mrs. Valli Arunachalam published by the Respondent for the years 2019 - 2020 & 2020 - 2021.

Arb.Appln.No.46 of 2021:-

Arbitration Application praying that this Hon'ble Court be pleased to pass an order directing the Respondent to furnish security to an extent of

Rs. 47,48,128/- (Rupees Forty Seven Lakhs Forty Eight Thousand One Hundred and Twenty Eight Only) being the royalty dues, failing which direct the Respondent to deposit a sum of Rs. 47,48,128/- (Rupees Forty Seven Lakhs Forty Eight Thousand One Hundred and Twenty Eight Only) before this Hon'ble Court, pending disposal of arbitration.

These Original Application and Arbitration applications coming on this day before this court for hearing in the presence of Mr.Arun C.Mohan, Advocate for the applicant in all applications and Mr. Krishna Srinivasan for M/s.Ramasubramaniam Associates, Advocates for the respondent in all applications, and upon reading the judges summons and the affidavit of Deivanai Arunachalam, filed in all applications and learned counsel for the applicant very fairly submitted that he will move the jurisdictional Court and that draws the curtain on the captioned applications, and it is made clear that this Court has not expressed any view or opinion on the merits of the matter and all questions are left open to be considered by the Jurisdictional Court, **it is ordered as follows:-**

That the O.A.No.419 of 2021 and Arb.Appln.Nos.45 and 46 of 2021 be and are hereby disposed of as closed perserving the rights of the

applicant to move the jurisdictional Court with similar or same prayer and leaving open all questions by not expressing any view or opinion on the merits of the matter.

2) That there shall be no order as to costs of these applications.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 15TH DAY OF FEBRUARY 2022.

Sd/-

ASSISTANT REGISTRAR (COMM. CASES)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ARS
18.03.2022

O.A.No.419 of 2021
and
Arb.Appln.Nos.45 & 46 of 2021

ORDER

DATED : 15.02.2022

THE HON'BLE MR. JUSTICE
M.SUNDAR

FOR APPROVAL: 23.03.2022

APPROVED ON : 24.03.2022

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THE HON'BLE MR. JUSTICE M.SUNDAR

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and
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(In all applications)

O.A.No.419 of 2021:-

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Arb.Appln.No.45 of 2021:-

Arbitration Application praying that this Hon'ble Court be pleased to direct the Respondent to render accounts to the Applicant in relation to the sales of the book titled "MY BOOK OF GRAMMAR BOOK 1 TO 8" authored by Late Mrs. Valli Arunachalam published by the Respondent for the years 2019 - 2020 & 2020 - 2021.

Arb.Appln.No.46 of 2021:-

Arbitration Application praying that this Hon'ble Court be pleased to pass an order directing the Respondent to furnish security to an extent of Rs. 47,48,128/- (Rupees Forty Seven Lakhs Forty Eight Thousand One Hundred and Twenty Eight Only) being the royalty dues, failing which direct the Respondent to deposit a sum of Rs. 47,48,128/- (Rupees Forty

Seven Lakhs Forty Eight Thousand One Hundred and Twenty Eight Only)
before this Hon'ble Court, pending disposal of arbitration.

These Original Application and Arbitration applications coming on
this day before this court for hearing, **the Court made the following
order:-**

This common order will govern the captioned three applications.

2. Mr.Arun C.Mohan, learned counsel for the applicant in all the
three applications and Mr.Krishna Srinivasan of M/s.S.Ramasubraminam
Associates (Law Firm) on behalf of the respondent in all three applications
are before this Court in this hybrid hearing.

3. Owing to the trajectory the matter has taken today, it will
suffice to say that the captioned three applications have been presented in
this Court under Section 9 of 'The Arbitration and Conciliation Act, 1996
(Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and
clarity].

4. There is no dispute or disagreement before this Court that
the arbitration agreement between the parties i.e., Arbitration Agreement
within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is
in the form of two clauses in a document (Contract), which goes by the

caption 'ASSIGNMENT TERMS', the two clauses are Clauses 25 and 27 captioned 'DISPUTE RESOLUTION' and 'GOVERNING LAW' respectively, which read as follows:

'25.DISPUTE RESOLUTION

In the event of any dispute or difference arising between the parties arising out of or concerning this Agreement or its construction or effect or the rights, duties or liabilities of the Parties or any other matter in any way connected with or arising out of the subject matter of the Agreement, the Parties shall endeavour to settle the same by mutual negotiations and agreement. If, for any reason, such dispute or difference cannot be resolved amicably by the Parties within 45 calendar days of the same being notified by one Party to the other in writing, the same shall be settled by way of arbitration proceedings to be conducted by a sole arbitrator. In the event the parties fail to appoint an arbitrator within 30 days, the arbitrator shall be appointed by the High Court of Delhi in accordance with the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held in accordance with the Arbitration and Conciliation Act, 1996. The decision of the arbitrator shall be final and binding upon the Parties. The

venue of the arbitration shall be or Gurgaon (Haryana), as may be mutually agreed between the Parties. The language of the arbitration and the award shall be English.

27. GOVERNING LAW

This Agreement shall be deemed to be a contract made in India and shall be construed and applied in all respects in accordance with applicable Indian laws and subject to clause 25; the parties hereto submit and agree to the exclusive jurisdiction of the courts of Delhi.'

(underlining made by this Court for ease of reference)

5. In the considered view of this Court with due respects to the draftsman, Clause 25 is not happily worded *inter alia* owing to the underlined portion in Clause 25 supra. It may not be necessary to dilate much on this, as it is clear that Chennai is neither the 'Venue' nor the 'Seat'. There is nothing to demonstrate that the parties have agreed Chennai to be either the 'Venue' or the 'Seat'. As regards jurisdiction, going by the ***Indus Mobile*** principle being principle laid down by Hon'ble Supreme Court in ***Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others*** reported in (2017) 7 SCC 678 which was reiterated by Hon'ble Supreme Court in the oft-quoted ***BGS SGS SOMA JV*** principle i.e., ***BGS SGS SOMA JV Vs. NHPC Limited*** reported in (2020) 4

SCC 234, the Courts in Delhi and or Chandigarh will have jurisdiction. In so far as Delhi is concerned, it is explicit qua Clause 27.

6. Faced with the above situation, learned counsel for applicant very fairly submitted that he will move the jurisdictional Court. That draws the curtains on the captioned applications. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter and all questions are left open to be considered by the jurisdictional Court.

7. All the three applications are disposed of as closed preserving the rights of the applicant to move the jurisdictional Court with similar or same prayer and leaving open all questions by not expressing any view or opinion on the merits of the matter. There shall be no order as to costs.

Sd/-M.S.J.

15.02.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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