



WEB COPY



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Arb.O.P.No.3 of 2022
and Arb.Appln.No.250 of 2022

R.Ramkumar

... Petitioner / Applicant

-VS-

M/s.GTL Infrastructure Limited,
Represented by its Managing Director,

Registered Office At:

Global Vision, 3rd Floor,
Electrical Sadan - 2,
MIDC, TTC Industrial Area,
Mahape, Navi Mumbai 400710.

Branch Office At:

New No.2332, Old No.186, City Center,
3rd Floor, Pursawalkam High Road,
Kilpauk, Chennai - 600 010.

... Respondent / Respondent



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

WEB C

PRAYER in Arb.O.P.No.3 of 2022: Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, pleaded to appoint a sole arbitrator to adjudicate and decide the arbitral dispute between the petitioner and the respondent, arising out of the lease deed dated 19.06.2009.

PRAYER in Arb.Appln.No.250 of 2022: Arbitration Application filed under Order XIV Rule 8 of Original Side Rules R/W Section 9(1)(ii)(e) of the Arbitration and Conciliation Act, 1996, pleaded to direct the respondent to remove the dangerous and dilapidated mobile towers and other related equipment thereto, comprised in Survey No.119/9A (as per Revenue Record S.No.119/9A7B), Thumbakodu Village, Kalkulam Taluk, Kanyakumari District, which endanger the life and property of the applicant and also public, within the time stipulated by this Hon'ble Court.

For Petitioner / Applicant : M/s.S.Mahalakshmi

For Respondent / Respondent : M/s.C.Sakthi Manikandan



WEB COPY



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

COMMON ORDER

A petition for constitution of an arbitral tribunal and an application for interim relief have been presented. The petitioner asserts that a lease deed dated 19.06.2009 was executed by and between the petitioner and the respondent. The petitioner relies upon clause 6.2 of the lease deed and states that the said clause provides for dispute resolution by arbitration. Clause 6.2 is set out below:

"6.2. If any dispute, difference or question concerning the interpretation or implementation of any provision of this agreement arises or as to the right, liabilities and duties of either party, the same shall be referred to the arbitration which shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, including any statutory modification thereof. The place of such arbitration shall be Coimbatore. The decision of the arbitrator shall be final and binding on both the parties"



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

WEB COPY

2. The petitioner states that the original lessee, Aircel Limited, was acquired by Chennai Network Infrastructure Limited, which subsequently merged with the respondent herein. Consequently, it is stated that the respondent herein has stepped into the shoes of the lessee and is, therefore, bound by the arbitration agreement.

3. Upon disputes arising between the parties, the petitioner issued a notice dated 05.07.2021 under Section 21 of the Arbitration and Conciliation Act, 1996 and invoked the arbitration clause. In spite of receipt of the said notice, there was no reply thereto. Hence this petition.

4. In the application for interim relief, the applicant / petitioner seeks an order for the removal of the mobile tower and related equipments on the ground that the mobile towers and equipment ancillary thereto are not in a good condition and that they pose a threat to life and property.



WEB COPY

5. The respondent admits that it is the successor-in-interest of the original lessee. However, it is contended that the lease deed containing the arbitration clause is not adequately stamped. As regards the request for interim relief, the respondent relies upon a stability report dated 10.01.2023 and refutes the contention that the mobile tower and the ancillary equipment are in poor condition. It is expressly denied that the said mobile tower poses a threat to life or property.

6. Both parties admit that there is an arbitration agreement in the lease deed dated 19.06.2009. The only ground on which the respondent has objected is that the relevant document is not adequately stamped. Such objection is not a ground to refuse to constitute the arbitral tribunal. However, it is open to the respondent to raise this objection before the arbitral tribunal.

7. Therefore, Arb.O.P.No.3 of 2022 is allowed by appointing



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

Mr.B.Kishore, Advocate, Mobile No.9962157571, as the sole arbitrator. The arbitrator is called upon to enter upon reference and adjudicate the dispute.

Although the arbitration clause specifies the place of arbitration as Coimbatore, both parties consent to the seat and place of arbitration being shifted to Chennai. The said consent is recorded. The arbitral tribunal may fix the fees and expenses in relation to the arbitral proceedings in consultation with the parties.

8. As regards the application for interim relief, the assertions of the applicant are countered by the respondent by producing a stability report. By the certificate annexed thereto, it is certified that the physical condition of the existing tower foundation is satisfactory. The said certificate is valid for a period of two years from the date of issue. On the basis of the said certificate, *prima facie* it does not appear that there is any imminent threat to life or property from the tower. Learned counsel for the respondent submits that the respondent will seek expert advice and respond to this stability report.



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

WEB COPY 9. In view of the *prima facie* conclusion that the mobile tower does not appear to present an imminent threat to life or property, the interim application (Arb.Appln.No.250 of 2022) is disposed of by leaving it open to the applicant to present an application seeking the same or substantially similar relief before the arbitral tribunal.

11.01.2023

rna

Index : Yes / No

Internet : Yes / No



WEB COPY



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

SENTHILKUMAR RAMAMOORTHY,J

rna

Arb.O.P.No.3 of 2022
and Arb.Appln.No.250 of 2022



WEB COPY



Arb.O.P.No.3 of 2022, Arb.Appln.No.250 of 2022

11.01.2023