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Arb.O.P(Com.Div.) No.506 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.506 of 2023

Ashok Kumar Bohra

... Petitioner

Vs.

M Film Factory,
Represented by Mr.T.Mannan,
No.1, Lady Madhavan First Cross Street,
Palat Madhavan Road,
Mahalingapuram, Chennai – 600 034.

... Respondent

Prayer: Original Petition is filed under Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996, praying for appointment of a sole arbitrator to adjudicate over the dispute arising out of the 2nd film assignment agreement dated 10.09.2018.

For Petitioner : Ms.Keerthikiran Murali

For Respondent : No Appearance

ORDER

The notice on the respondent was not served and therefore the petitioner was permitted to take out Paper Publications pursuant to order dated 03.01.2024.



2. The petitioner has taken out Paper Publications in “Daily Thanthi” and in “Deccan Chronicle” on 19.01.2024.

3. To that effect, the petitioner has also filed Affidavit of Service enclosing copies of Paper Publications in the respective Newspapers.

4. There is a deemed service of notice on the respondent.

5. The petitioner had signed two separate Assignment Agreements on 10.09.2018 in respect of an untitled Films “Production No.1” and “Simman” respectively.

6. Both the Assignment Agreements contemplate resolution of dispute through arbitration. Clause 7 of the respective Assignment Agreements read identically as follows:-

“7. Governing Law and Jurisdiction:

7.1 This Agreement (and any dispute, difference, proceedings or claim of whatever nature arising out of or in connection with this Agreement) shall be governed by, and construed in accordance with, the laws of India and shall be subject to the exclusive jurisdiction of courts in Chennai only.



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7.2 All disputes arising in connection with this Agreement shall be fully settled under the provisions of Indian Arbitration and Conciliation Act, 1996. The parties shall appoint a single arbitrator, if agreed, otherwise, 3 (Three) arbitrators shall be appointed, one to be appointed by each of the parties and the third by the said two Arbitrators and the Arbitrators' decision shall be final and binding on the parties to this Agreement.”

7. The dispute between the petitioner and the respondent has arisen on account of the second Assignment Agreement dated 10.09.2018 for the Tamil Film “Simmam” in respect of which, the petitioner was assigned dubbing rights.

8. The petitioner has also issued notice on 13.01.2021 which was also replied by the respondent through their counsel on 25.01.2021.

9. The petitioner has thereafter issued notices invoking arbitration clause under Section 21 of the Arbitration and Conciliation Act, 1996 on 06.04.2023 followed by notice dated 02.08.2023. Both the notices have been returned to the petitioner as “unclaimed”.

10. It is in this background, this Original Petition has been filed. The respondent has exchanged few communications through a counsel. However, the respondent has failed to respond to the notices dated 06.04.2023 and



02.08.2023. The notices sent on the respondent through Court was also returned as unserved and therefore Paper Publication was ordered.

11. Despite deemed service of notice on the respondent, the respondent has not come forward and appear before this Court either in person or through a Counsel.

12. The respondent has thus forfeited the right to participate in the process of constitution of an Arbitral Tribunal as per Clause 7 of the Assignment Agreements dated 10.09.2018. The petitioner has nominated Hon'ble Mr.Justice.K.Mohan Ram, (Retd.), Former Judge of this Court as a Sole Arbitrator.

13. I see no impediment to appointing **Hon'ble Mr.Justice.K.Mohan Ram,(Retd.) Former Judge of this Court, residing at “ISHANA”, Plot No.15B, Radiant Avenue, 5th Street, VGP Golden Beach Layout, Injambakkam, ECR, Chennai – 115, Mobile No.94444 64646**, as a Sole Arbitrator to enter upon reference to resolve the *inter se* dispute between the parties and to pass an Award after issuing notice to the respondent.



14. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

15. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

16. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.



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17. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

30.01.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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