



C.M.A.Nos.2764 & 2775 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.Nos.2764 & 2775 of 2023

and

C.M.P.Nos.25476 & 25559 of 2023

Shine Outdoor Advertising Pvt. Ltd.,
represented by its Authorised Signatory,
Mr.B.Manikandan, Public Relationship Officer,
Branch Office at S.F.No.435, D.No.27/7,
PRK Garden, Vilankurichi Post,
Coimbatore - 641035. ...Appellant in CMA.No.2764 of 2023

Skyrams Outdoor Advertisings India Pvt. Ltd.,
rep. by its K.David Carlson Burns,
Kathir Avenue, 1st Floor, No.33, Andal Street,
Lakshmipuram, Peelamedu, Kamarajar Road,
Coimbatore - 641004. ...Appellant in CMA.No.2775 of 2023

Vs.

Coimbatore City Municipal Corporation,
represented by its Commissioner,
Coimbatore - 641001. ...Respondent in both appeals

Common Prayer: Civil Miscellaneous Appeal filed under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 r/w. Section 13(1A) of the Commercial Courts Act, against the order of the learned Judge of the Commercial Court (District Judge Cadre), Coimbatore dated 08.09.2023 made in A.O.P.Nos.161 & 160 of 2023.



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C.M.A.Nos.2764 & 2775 of 2



For Appellants : Mr.Kandhan doaisami for N.Mathivanan
For Respondent : Mr.K.M.D.Muhilan, Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

These two appeals are directed against the order of the Commercial Court, Coimbatore made in exercise of jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996.

2.The brief facts that led to the filing of the Arbitration OPs under Section 9 are as follows:-

The appellants were granted a concession / right to display advertisements in the bus shelters situate within the area of the Coimbatore City Municipal Corporation on a construct, own and transfer basis. Originally, an agreement was entered into on 01.08.2015 and the appellants put up nearly 75 bus shelters in the area. A concession was granted to the appellants under the agreement to advertise in the area earmarked in the bus shelters, collect the revenue and appropriate it to themselves subject to payment of the permission fee to the Corporation, license fee, service tax and



advertisement tax to the District Collector. On the advent of the GST, the appellants claimed that the components of service tax and advertisement tax got subsumed by the Goods and Services tax and therefore, the levy of advertisement tax and service tax is not correct. The District Collector disagreed with the claims of the appellant which led to several correspondence and Writ Petitions before this Court.

3.Finally, the District Collector passed an order on 01.12.2022 rejecting the request for waiver. The same was challenged by way of a Writ Petition in W.P.No.143 of 2023 and this Court on 24.01.2023 granted interim stay of operation of the order of the District Collector, subject to condition, the appellants deposits 50% of the tax demand. It is not in dispute that the appellants had paid 50% of the tax demanded and there is also stay order and stay order continues. The said Writ Petition is pending.

4.Parallely, the appellants also sought for waiver of the permission fee payable to the Corporation for the Covid-19 period. This request was also rejected by the Corporation which led to the appellants moving this Court under Section 11 of the Arbitration and Conciliation Act for



appointment of an Arbitrator. A retired District Judge was appointed as an Arbitrator by this Court in its order dated 03.11.2022. Therefore, the issue relating to waiver of the permission fee payable to the Corporation was subject matter of reference to the Arbitrator appointed by this Court on 03.11.2022.

5.While things stood thus, the District Collector, Coimbatore Municipality by its order dated 01.02.2023 cancelled the agreement alleging that there has been violations committed by the appellants. The relevant portion of the order cancelling the agreement reads as follows:-

"This is to inform that the agreement concluded with your firm on 26.10.2015 for the subject mentioned work is hereby cancelled for violation on your part of the agreement conditions as mentioned below as well as on account of non compliance of the conditions and specific directions as mentioned in the Government orders and the District Collector's letter referred above.

Agreement condition 2.2 Permission Period (Sub para No.2)

The Licensee is permitted to display commercial advertisement on the Illuminated Glow Sign Boxes of permitted size. The revenue so generated through advertisement during the entire period of the License will



accrue exclusively to the Licensee. The Licensee shall however, pay hoardings tax to the District Collector and land rent to Coimbatore Corporation (since the Highways Department authorized the Corporation to collect and appropriate) in respect of the advertisements displayed on the illuminated Glow sign Boxes displayed by the Licensee in accordance with the proceedings of the Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003 and as amended subsequently.

License for the Advertisement in the Bus shelters has not been renewed by the licensee sofar as required under Rule No.5 of Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Tules, 2003.

Further, the licensee failed to pay the license fee to erect hoardings in the Bus shelters for the period from 01.04.2018 to 30.09.2019 as required under Rule No.13 of Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules 2003."

6. Aggrieved by the cancellation, the appellants moved this Court in W.P.Nos.6201 & 6209 of 2023, this Court found that in view of the arbitration clause contained in the agreement, writ petition cannot be



entertained and therefore, relegated the parties to the arbitration. Pursuant to the said order, the appellants have moved this Court under Section 11 of the Arbitration and Conciliation Act in Arbitration O.P.(Com.Div.)Nos.104 & 105 of 2023 and by order dated 12.12.2023 made in the said original petitions, Hon'ble Mr.Justice N.Kirubakaran (Retd.,) has been appointed as Arbitrator.

7.While things stood thus, the appellants moved an application under Section 9 before the Commercial Court, Coimbatore, seeking interim protection. During the hearing of the application, a counter was filed by the respondent claiming that the appellants have not paid the permission fee payable to the Corporation. The learned Commercial Judge, who heard the application concluded that the appellants being licensees cannot claim any right to continue in possession. He also faulted the appellants for having not paid the license fee payable to the Corporation. On the said conclusions, the learned Commercial Judge dismissed the application under Section 9. Hence, these appeals.

8.Being an appeal against an order passed in a Section 9 application



and considering the fact that an Arbitral Tribunal has also been constituted, we confine the scope of hearing of the appeals only to the interim arrangement that could be made till disposal of the arbitration proceedings by the Arbitrator. There are three main issues, on which, the parties are litigating. The first issue is relating to payment of advertisement tax. Second one is relating to the payment of license fee and the third is relating to payment of permission fee. While the first and second are payable to the District Collector, the third is payable to the Corporation.

10.As far as the advertisement tax is concerned, Writ Petition is pending in this Court and there is an interim order which protects the appellants. As far as the license fee is concerned, it is the contention of the appellants that the District Collector had refused to receive the license fee unless the advertisement tax is paid. As regards the permission fee is concerned, it is the contention of the appellants that their applications for waiver were pending and that issue was referred to the Arbitrator and as of today, the respondent has passed an order on 24.08.2023 waiving certain amount and directing the appellants to pay the balance amount payable within one week from the date of the order.



11.It is not in dispute that the amounts payable towards permission fee to the Corporation as determined by the order of the Commissioner, Coimbatore Corporation dated 24.08.2023 has been paid. We have extracted the order canceling the license. We find that it is based on non-payment of the license fee and non-payment of the advertisement tax as well as license fee. Though there is a reference to the requirement of payment of land rent, there is nothing to show that the cancellation was based on non-payment of the permission fee/ land rent.

12.The learned counsel for the Corporation would submit that the land rent is the permission fee. Though there is a reference to land rent, the order is not a consequence of non-payment of land rent. The cancellation is only for non-payment of the license fee and the advertisement tax. Admittedly, this is a contract where, the appellants have invested huge amounts in erecting bus shelters, on the fond hope of realizing that money from the revenue generated by advertisement.

13.No doubt, they are liable to pay the charges that are to be paid



regularly. We find that the failure is not willful or wanton. As regards the advertisement tax, there is a protective order in favour of the appellants passed by this Court on condition and that condition has also been complied with. As regards payment of permission fee payable to the Corporation, the same was pending in arbitration before the retired District Judge appointed by this Court and during the currency of the arbitration proceeding itself, the Corporation had passed an order waiving a part of it and it is not in dispute that the balance amount has been paid. As regards license fee, it is the specific contention of the appellant that the District Collector insisted upon payment of advertisement tax for renewal of license and acceptance of license fee.

14. We therefore, do not think that Section 9 Court was right in denying interim relief to the appellants. Section 9 Court had gone into intricacies of law and difference between lease and license and the scope of right of a licensee as if it is deciding a title suit between the parties. We do not think such exercise could be carried out while deciding a Section 9 application, which only provides for interim protection depending on the balance of convenience and the irreparable injury that will be caused to the



parties.

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15. It is very easy to say that the appellants can claim damages, if the are successful in the arbitration proceedings. But, it is our experience that it is rather a Himalayan task to recover any money from any of the Government agencies particularly, a municipal Corporation. We should also look at the balance of convenience as we already pointed out that license was granted to the appellants because they invested that huge amounts in erection of bus shelters and the Corporation is enjoying the advantage of the bus shelters erected by the appellants at their own cost. Merely because the agreement terms them as licensees, they cannot be strictly treated as licensees. In fact, the license is coupled with an interest where they are permitted to advertise in the bus shelters that were constructed by them and generate revenue for 15 years coupled with an option for renewal for 5 years. To throw them out at this juncture, in our opinion, would amount to travesty of justice. The Section 9 Court has considered a completely new issue relating to non-payment of the permission fee to the Corporation, though it was not the basis for cancellation of the license in the order dated 01.02.2023. We therefore, unable to sustain the order of the Section 9 Court.



16. These Civil Miscellaneous Appeals are therefore, **allowed**. There will be an interim order, prohibiting the Corporation from interfering with the right of the appellants to advertise in the bus shelters erected by them subject to the appellants paying the license fee payable to the District Collector and the permission fee payable to the Corporation regularly without any default. If there is any default in payment of these two fees that are payable, it will be open to the Corporation to prevent the appellants from exhibiting the advertisements.

17. We make an earnest request to the learned Arbitrator to conclude the Arbitration proceedings at the earliest. None of observations made in this order are in the order passed under Section 9 will effect rights of the parties before the Arbitrator. In result, these Civil Miscellaneous Appeals are **allowed**. Parties are directed to bear their own costs in the appeals. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (R.S.V., J.)
14.02.2024

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Nuetral Citation :No

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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

KKN

The Commercial Judge (District Judge Cadre),
Coimbatore

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02.02.2024