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Arb.O.P.(Com.Div.)No.218 of 2023

In the High Court of Judicature at Madras

Dated : 09.10.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbiration O.P.(Com.Div.) No.218 of 2023

M/s.TSR Films Private Ltd.,
rep.by its Authorized
Signatory M.V.Ravindranath

...Petitioner

Vs

M/s.Devi Karumari Theatre,
Chennai-92

...Respondent

PETITION under Section 34(2)(a)(iv) of the Arbitration and Conciliation Act, 1996 praying to set aside the award of the sole Arbitrator dated 22.12.2022 and for costs.

For Petitioner : Mr.Dhanaram Ramachandran
For Respondent : Ms.M.Kaviya for Mr.T.Elumalai

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the award passed by the sole Arbitrator dated 22.12.2022.



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2. Heard both.

3. The case of the petitioner is as follows :

(i) The petitioner is engaged in the business of providing film projection and sound services to exhibitors across India through digital projection system for theatrical presentation. They entered into an agreement with the respondent on 25.4.2019 for the supply and installation of projectors and theatrical equipment in the theatre complex of the respondent. The equipment included (a) Barco Projector (DP4K-198) bearing Sl.No.2590051706; (b) lens; (c) Dolby Server IMS 2000 bearing Sl.No.317657; (d) Projector Stand; and (e) First Lamp.

(ii) During March 2020, pandemic intervened and hence, the theatre was closed for a considerable period, which resulted in a damage to the equipment that were supplied by the petitioner. Further, a trigger notice was issued by the petitioner to the respondent and thereafter, the sole Arbitrator was appointed.

(iii) Before the sole Arbitrator, the petitioner filed a claim petition and sought for payment of a sum of Rs.47,91,690/- to mitigate the damage caused to their equipment due to mishandling by the



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respondent along with interest at the rate of 12% per annum till realization, for a sum of Rs.72 lakhs along with interest at the rate of 12% per annum towards prospective actual loss caused to the petitioner due to breach of the agreement and for costs.

(iv) Before the sole Arbitrator, the respondent took a defence that it was the obligation on the part of the petitioner to maintain the equipment as per Clause 3.3 of the agreement. Clause 9 of the agreement also provided that neither party would be liable for any incidental, indirect or direct damage or losses or for breach or negligence unless it fell under any of the other clauses wherein specific obligation has been prescribed.

(v) The respondent had taken a further defence that within a year of installation of the projector, pandemic started and that there was a national lock down, as a result of which, from 22.3.2020, the entire theatre complex was shut down. The respondent had also taken the ground of act of God.

(vi) Later, the petitioner approached this Court and obtained an order for the removal of equipment. Pursuant to that, the equipment were also removed from the theatre premises. Thereafter, the claim petition came to be filed before the sole Arbitrator claiming for huge



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sums of money. The respondent also made a counter claim for payment of a sum of Rs.3 Crores for loss of reputation of business and loss of monetary profits.

(vii) Before the sole Arbitrator, the petitioner examined three witnesses namely C.W.1 to C.W.3 and marked Ex.C.1 to Ex.C.13. No witnesses were examined and no documents were marked on the side of the respondent.

(viii) The sole Arbitrator, on considering the facts and circumstances of the case and on appreciation of the evidence let in on the side of the petitioner, came to the conclusion that the petitioner would not be entitled to any compensation for damage caused to the equipment since there was proof to show that such damage had taken place due to non usage of the equipment from 15.3.2020 to 01.10.2021 during the lock down period. However, the sole Arbitrator awarded a sum of Rs.1,40,718/- towards loss of revenue of advertisement charges and virtual print fee for the period from 02.10.2020 to 31.1.2021 in favour of the petitioner. The sole Arbitrator also awarded another sum of Rs.2,81,435/- towards loss of revenue of advertisement charges and virtual print fee for the period from 01.2.2021 to 26.4.2021 and again from 01.10.2021 to



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19.10.2021. The sole Arbitrator further directed the said amounts to be paid along with interest at the rate of 12% per annum from 28.4.2021. The sole Arbitrator rejected the counter claim made by the respondent in entirety. Hence, the petitioner is before this Court.

4. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

5. The main ground that was urged on the side of the petitioner is that the sole Arbitrator has not conducted the proceedings in a proper manner since no issues were framed, that the evidence that were recorded from the witnesses was not signed and that the grounds that were raised by the petitioner were not considered. It was further contended that the sole Arbitrator awarded a paltry sum without any justification, that the sole Arbitrator had not appreciated the evidence properly and rendered the findings contrary to the evidence and that therefore, the award suffers from perversity and manifest illegality.

6. The sum and substance of the dispute before the sole



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Arbitrator is regarding the loss suffered by the petitioner due to the damage caused to the projectors.

7. The sole Arbitrator framed seven issues. They were (i) whether there was non usage of the equipment and if so, the period of non usage ? (ii) whether the non usage was wanton and wilful ? (iii) whether the non usage had violated any of the conditions of the agreement ? (iv) whether the equipment was damaged because of the non usage and the liability fell on the respondent? (v) whether the respondent could be made liable for the non usage ? (vi) to what extent, the respondent could be made liable ? and (vii) whether the respondent was liable for the prospective losses ?

8. In so far as the issue of non usage of the equipment is concerned, the sole Arbitrator took into consideration the pandemic period when there was a total shut down from 15.3.2020 to 01.10.2020. Even from 02.10.2020, permission was granted to run the theatres with 50% capacity upto 31.1.2021. As a result, the respondent was forced to keep the theatre complex shut down. The sole Arbitrator also considered the evidence of C.W.1 and came to the



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conclusion that the theatre could be made fully operational from 01.2.2021 to 25.4.2021 and again from May to September 2021, the theatre was ordered to be closed. Immediately thereafter, possession of the theatre was taken over by the petitioner by filing an application before this Court for appointment of an advocate commissioner.

9. The sole Arbitrator also took into consideration the fact that the report of the advocate commissioner did not point out as to when and how the equipment were damaged. On considering the totality of the extraordinary circumstances that were prevailing, the sole Arbitrator came to the conclusion that the respondent was completely prevented from operating the theatre complex due to pandemic and that the non operation of the equipment was neither wilful nor wanton.

10. The sole Arbitrator also considered Clause 9 of the agreement and came to the conclusion that this clause covered the extraordinary situation faced by the respondent during the pandemic period. Accordingly, the sole Arbitrator concluded that the respondent could not be blamed for the non usage of the equipment and that there was no violation of any terms of the agreement by the



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respondent. The sole Arbitrator took into consideration the evidence of C.W.3 and also the report that was marked as Ex.C.8 and came to the conclusion that the damage to the equipment could not be said to have taken place because of the non usage.

11. The sole Arbitrator further took into consideration the evidence of C.W.3 and rendered a finding that the equipment were scrapped and it could not be informed as to when such destruction took place. On a demurrer, the sole Arbitrator also rendered a finding that even if the damage was due to the non usage of the equipment, the respondent could not be blamed for that considering the extraordinary circumstances that were prevailing at that point of time.

12. The sole Arbitrator has done his best in balancing the rights between the parties and that is the reason as to why, in spite of rendering a finding that the respondent could not be blamed, the sole Arbitrator awarded (i) a sum of Rs.1,40,718/- towards loss of revenue of advertisement charges and virtual print fee for the period from 02.10.2020 to 31.1.2021 to the extent of 50% crowd and (ii) another sum of Rs.2,81,435/- towards loss of revenue of advertisement



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charges and virtual print fee for the period from 01.2.2021 to 26.4.2021 and again from 01.10.2021 to 19.10.2021. For this purpose, the sole Arbitrator took into consideration the calculation given by C.W.2 in the proof affidavit.

13. In so far as the claim towards prospective loss is concerned, the sole Arbitrator took into consideration the fact that the equipment, which were taken possession on 20.10.2021, were subsequently scrapped. Hence, no compensation was granted under this head.

14. The counter claim made by the respondent was out-rightly rejected since they did not let in any evidence.

15. In the considered view of this Court, the view taken by the sole Arbitrator based on the evidence available is a possible view and this Court cannot sit on appeal and render a different finding and the same will be beyond the scope of Section 34 of the Act. Further, the view taken by the sole Arbitrator cannot be held to be perverse and it does not suffer from manifest illegality. The compensation awarded is reasonable and this Court does not find any ground to interfere with



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the award passed by the sole Arbitrator.
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16. In the result, the above original petition stands dismissed.

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N.ANAND VENKATESH,J

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