

O.A.No.414 of 2024 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.06.2025

Pronounced on : 09.06.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**O.A.No.414 of 2024
and
Arb.Appln.No.286 of 2024
and
Arb.O.P.(Com.Div.) No.537 of 2024**

M/s.TSR Films Private Limited,
Chennai.

.. Applicant

VS.

M/s.New Pride Multiplex,
Maharashtra.

.. Respondent

For Applicant : Mr.Dhanaram Ramachandran
for M/s.D.R.Law Chambers

For Respondent : Ms.S.P.Arthi
& Mr.M.S.Niranjhan



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COMMON ORDER

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O.A.No.414 of 2024 has been filed seeking for an interim injunction to restrain the respondent from exhibiting any digital content as per the agreement dated 23.08.2020 pending final disposal of arbitration. Arb.Appln.No.286 of 2024 has been filed seeking for appointment of an Advocate Commissioner by this Court. Arb.O.P.(Com.Div.)No.537 of 2024 has been filed seeking for appointment of an Arbitrator by this Court.

2. Heard Mr.Dhanaram Ramachandran, learned counsel appearing for the applicant; and Mr.M.S.Niranjan, learned counsel, for Ms.S.P.Arthi, learned counsel, for the respondent.

3. A preliminary issue has been raised by the respondent questioning the jurisdiction of this Court to decide these applications. According to the respondent, this Court lacks territorial jurisdiction to decide these applications for the following reasons:-

(a) No part of cause of action arose within the jurisdiction of this Court, as the contract, which is the subject matter of the dispute between the parties, was entered into only at Mumbai, and the stamp paper in which the contract was written was also purchased only at Mumbai.



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According to the respondent, no part of the obligations have to be performed by either of the parties at Chennai or within the State of Tamil Nadu.

(b) According to the respondent, since they are having their office only at Sangli, Maharashtra, it is only the Bombay High Court which has got jurisdiction to decide these applications filed under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 (in short “the Act”).

(c) According to the respondent, by a typographical mistake, eventhough in the first part of the arbitration clause, Mumbai has been mentioned, in the later part of the clause, inadvertently, Chennai has been typed, and therefore, whenever there is an ambiguity with regard to jurisdiction, Court should interpret the clause against the party who has drafted the contract. According to the respondent, since the contract was drafted by the applicant, this court should interpret the arbitration clause by holding that this Court lacks territorial jurisdiction to decide these applications filed under Section 9 of the Act as well as under Section 11 of the Act.

4. On the other hand, the applicant would submit that since the



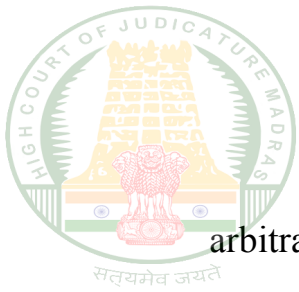
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respondent had given consent for appointment of an Advocate

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Commissioner before this Court in the application filed under Section 9 of the Act, and the Advocate Commissioner had also taken inventory from the respondent's premises pursuant to the orders passed by this Court, by applying Section 42 of the Act, only this Court has got jurisdiction to decide these applications, as under Section 42 of the Act, any subsequent applications filed under Part-I of the Act, can be entertained only by this Court, which has already exercised jurisdiction in the application filed by the application under Section 9 of the Act.

5. By relying upon the arbitration clause contained in the contract, which is the subject matter of dispute between the parties, which, in the later part of the said clause, reveals that Chennai Courts have got jurisdiction, the applicant claims that only this Court has got jurisdiction to decide these applications. According to the applicant, the Hon'ble Supreme Court has held that seat of arbitration and venue of arbitration cannot be used interchangeably. According to the applicant, it has also been established that mere expression 'place of arbitration' cannot be the basis to determine the intention of the parties with regard to the seat of



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arbitration. According to the applicant, the intention of the parties as to the seat of arbitration should be determined from other clauses in the agreement and the conduct of the parties.

6. According to the applicant, the reference of the respondent to emails between the applicant and the respondent precedes the contract and therefore, it does not have any relevance to decide as to whether this Court is having territorial jurisdiction to decide these applications or not. According to the applicant, once the arbitration agreement or an agreement containing an arbitration clause is validly executed, the terms of the agreement alone shall have enforceability. Therefore, according to the applicant, only Courts at Chennai are vested with the sole and exclusive jurisdiction as per Clause 15 of the Agreement, which is the subject matter of the dispute between the applicant and the respondent.

DISCUSSION:

7. This Court need not go into the merits of the respective claims made by the applicant and the respondent if this Court finds that this Court lacks territorial jurisdiction to decide these applications. Only if this Court finds that this Court is having the territorial jurisdiction, there



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becomes a necessity for this court to adjudicate on the merits of the respective claims made by the respective parties arising out of the contract which is the subject matter of the dispute between the parties. Therefore, at the first instance, this Court has to decide as to whether this Court is having the territorial jurisdiction to adjudicate these applications or not.

8. The following are the undisputed facts:-

(a) The contract dated 23.08.2020, which is the subject matter of the dispute between the parties, was not executed at any place in Tamil Nadu, which is within the jurisdiction of this Court.

(b) The contract dated 23.08.2020 discloses that the respondent had signed the contract only at Sangli, Maharashtra, and insofar as the applicant is concerned, the place where the applicant's Managing Director Tan Sri Ramasamy had signed the contract is left blank.

(c) Non-judicial stamp paper for Rs.100/-, in which the contract has been typed, was purchased only at Mumbai from a stamp vendor in Mumbai on 22.07.2020.

(d) The physical verification report dated 21.08.2022, which is the



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second document filed by the applicant in support of these applications,

discloses the location as Sangli. Chennai or any other place in Tamil Nadu has not been mentioned.

(e) The first legal notice was sent by the respondent through a lawyer on 17.01.2024 from Sangli, Maharashtra, and in the said notice, the applicant has been put on notice about the alleged breach of contract committed by them. Only on 14.02.2024, the applicant had sent a reply to the legal notice dated 17.01.2024 sent by the respondent referred to supra.

(f) A suit was filed by the respondent against the applicant seeking mandatory injunction and other reliefs pertaining to the subject matter of the contract only before the Civil Court in Sangli, Maharashtra, in R.C.S.No.78 of 2024. Prior to the filing of said suit, arbitration invocation notice was also issued by the applicant under Section 21 of the Act to the respondent.

(g) In these applications, a categorical stand has been taken by the respondent in their counter affidavit that no part of cause of action arose in Tamil Nadu and the seat of arbitration is only at Mumbai.

(h) O.A.No.414 of 2024, which was filed by the applicant seeking



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for appointment of an Advocate Commissioner, is still pending consideration by this Court for final disposal. Infact, in paragraph No.5 of the order dated 10.09.2024 passed in O.A.No.414 of 2024, this Court, while appointing an Advocate Commissioner, had also recorded the fact that eventhough the learned counsel for the respondent objected for the appointment of an Advocate Commissioner, but, on the suggestion of the Court and in order to avoid untoward complaints that may arise out of the inspection to be made by the applicant, it would be appropriate that the inspection to be made by the applicant along with an Advocate Commissioner to be appointed by this Court. Only under those circumstances, the learned counsel for the respondent had consented for appointment of an Advocate Commissioner.

9. This Court shall now analyse the arbitration clause contained in the contract, which is the subject matter of the dispute between the parties, and decide whether this Court is having the territorial jurisdiction to adjudicate these applications or not. The arbitration clause contained in the contract dated 23.08.2020, which is the subject matter of the dispute between the parties, is reproduced hereunder:-



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“15. JURISDICTION AND DISPUTE
RESOLUTION: This agreement will be governed by
the Courts in Mumbai and will be governed by the
laws of India:

In the event of any dispute or difference
arising at any time between the parties hereto as to
the construction, meaning or effect of this agreement
or any clause or thing contained herein or the rights,
duties, liabilities and obligations of the parties
hereto, the same shall be referred to the arbitration of
a Sole Arbitrator appointed by the TSR. And whose
decision shall be final and binding on the parties.
The arbitral proceedings shall be in accordance with
the Arbitration and Conciliation Act, 1996, and/or
any statutory modification or re-enactment thereof
for the time being in force. The venue of such
arbitration shall be at Mumbai only and the Courts at
Chennai alone shall have the sole and exclusive
jurisdiction. The language so used in the arbitral
proceedings shall be English.”

10. The opening sentence of the arbitration clause makes it clear
that the agreement will be governed by the Courts in Mumbai and will be
governed by the laws in India. In the later part of the arbitration clause,
it has also been made clear that venue of the arbitration shall be at



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Mumbai only. However, contradicting the opening sentence of the arbitration clause, the later part of the arbitration clause discloses that Courts at Chennai alone shall have the sole and exclusive jurisdiction. A categorical stand has been taken by the respondent that “reference to Courts at Chennai alone shall have the sole and exclusive jurisdiction” is a typographical error. A categorical stand has also been taken by the respondent that since the entire cause of action arose only in Mumbai, only Courts in Mumbai have got jurisdiction to decide these applications.

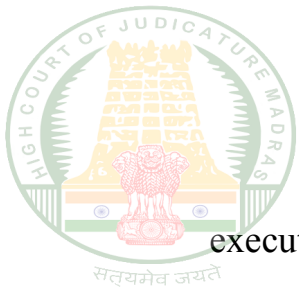
11. As seen from the undisputed facts, which have been recorded by this Court from paragraphs 8(a) to 8(h), it is clear that no part of the cause of action arose within the State of Tamil Nadu. A decision of the Hon'ble Apex Court in ***Bharat Sher Singh Kalsia Vs. state of Bihar and another [(2024) 4 SCC 318]*** relied upon by the learned counsel for the respondent also makes it clear that if there is a repugnancy between the earlier and later clauses of a deed, whereby a later clause destroys altogether the obligation created by the earlier clause, then the later clause is to be rejected as repugnant to the earlier clause and the earlier clause prevails.



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WEB COPY 12. In the case on hand, admittedly, no part of the cause of action arose within the State of Tamil Nadu as the entire cause of action took place only in the State of Maharashtra. The documents placed on record by the applicant in support of their applications also reveal that the entire cause of action took place only in the State of Maharashtra. The undisputed facts which have been recorded by this Court in paragraph No.8(a) to 8(h) of this order also proves that the entire cause of action arose only within the State of Maharashtra.

13. It is to be noted that the respondent is having its office only at Sangli, Maharashtra, and the contract, which is the subject matter of the dispute between the parties, was also engrossed in a non-judicial stamp paper purchased from Mumbai. The place of signature of the contract has been left blank insofar as the applicant is concerned and the place of signature in respect of the respondent discloses that it was signed by the respondent only at Sangli, Maharashtra. The venue of the arbitration has also been fixed under the arbitration clause only at Mumbai. The applicant was also having its office at Mumbai, when the contract was



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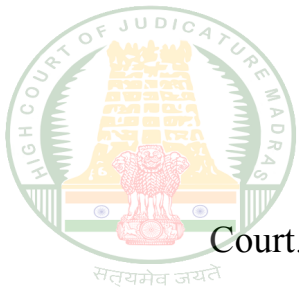
executed. The same is also not disputed by the learned counsel for the applicant during the course of his submissions.

14. The learned counsel for the applicant relies upon Section 42 of the Act, which is reproduced hereunder:-

Section 42: Jurisdiction --

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

15. Relying upon Section 42 of the Act, the learned counsel for the applicant would submit that since the respondent had agreed for appointment of an Advocate Commissioner by this Court in the application filed by the applicant for appointment of an Advocate Commissioner in Arb.Appln.No.286 of 2024, all subsequent applications arising out of Part-I of the Act will have to be filed only before this



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Court. Admittedly, Arb.Appln.No.286 of 2024 has not been finally

disposed of by this Court and the said application is still pending consideration along with other applications including Section 11 application, which is being adjudicated by this Court through this order.

In all these applications, the respondent has filed counter affidavit and they have taken a categorical stand that this Court lacks territorial jurisdiction to adjudicate these applications, since the arbitration clause stipulates that seat of the arbitration is only at Mumbai and no part of the cause of action arose within the State of Tamil Nadu. Even in the order dated 10.09.2024 passed by this Court in O.A.No.414 of 2024 and Arb.Appln.No.286 of 2024, wherein an Advocate Commissioner was appointed, it has been made clear that eventhough the learned counsel for the respondent objected to the appointment of an Advocate Commissioner, but, only on the suggestion of the Court and in order to avoid untoward complaints that may arise out of the inspection to be made by the applicant, it would be appropriate that inspection to be made by the applicant under the supervision of an Advocate commissioner to be appointed by this Court.

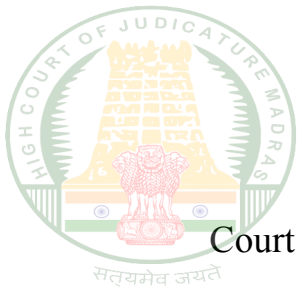


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16. An order passed by a Court without jurisdiction is considered nullity, meaning it is not binding and it has no legal effect. This principle is established through numerous case laws and any order passed by the Court without jurisdiction is considered as invalid, void and has no legal effect and it is not binding on the parties involved. The invalidity of the order can be raised at any time even during the execution or collateral proceedings. Courts inability to hear the matter due to factors like territorial, pecuniary or jurisdiction renders the proceedings invalid. Even if the parties agree to the order, the lack of jurisdiction cannot be waived or cured.

17. In the case on hand, since O.A.No.414 of 2024 and Arb.Appln.No.286 of 2024 has not been finally disposed of by this Court, the applicant cannot take a stand that the respondent having consented for appointment of an Advocate Commissioner before this Court, only this Court will have jurisdiction to decide all subsequent applications filed under the Act, by applying Section 42 of the Act. When a categorical and consistent stand has been taken by the respondent in all their counter affidavits filed before this Court that this



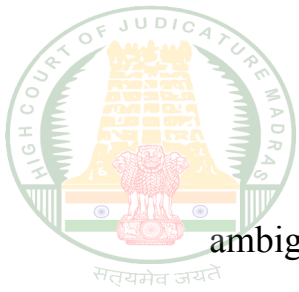
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Court lacks territorial jurisdiction to decide these applications and that too, when no part of cause of action arose within the State of Tamil Nadu, and the opening paragraph of the arbitration clause makes it clear that only Mumbai Courts will have jurisdiction, the applicant cannot exploit the ambiguity with reference to court's jurisdiction found in the later part of the arbitration clause. The surrounding circumstances, which are supported by documents, which have been recorded as undisputed facts in paragraph No.8(a) to 8(h) of this order, makes it clear that the intention of the parties was only to fix the seat of the arbitration at Mumbai alone and therefore, Courts in Mumbai alone have got territorial jurisdiction to decide these applications and not this Court.

18. Since the order passed by this Court appointing an Advocate Commissioner is not a final order and since this Court did not decide the jurisdiction issue earlier and since the said application is still pending and is being disposed of only through this order finally, and since this Court lacks territorial jurisdiction, the applicant's reliance on Section 42 of the Act is unsustainable.

19. "Contra proferentem," which means "against the offeror" or "against the drafter," is a legal doctrine in contract law that dictates how



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ambiguous clauses in a contract should be interpreted. “Contra proferentem” means that if a clause is ambiguous, it should be interpreted against the interests of the party who drafted it or introduced it. This rule is often used in situations, where there is an imbalance of bargaining power between the parties, and it serves to protect the weaker party from potential exploitation. By applying “contra proferentem” principle also, it is absolutely clear that this Court lacks territorial jurisdiction to decide these applications.

20. For the foregoing reasons, this Court lacks territorial jurisdiction to decide these applications and accordingly, O.A.No.414 of 2024, Arb.Appln.No.286 of 2024 and Arb.O.P(Com.Div.) No.537 of 2024 are dismissed. However, liberty is granted to the applicant to approach Mumbai Courts if they so desire for redressal of their grievance against the respondent.

09.06.2025

Index: Yes / no
Neutral citation : Yes / no
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