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Arb. O.P. (Com. Div.) No.362 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.362 of 2022

1. Mrs Shraddha Nishant Shelat,
2. Mr. Jobin Joy, ... Petitioners

-Vs-

1. Chaai Waale Trader Private Limited,
Rep. by its Managing Director
and having registered address at
No.23, Chowkani Towers,
2nd Floor, White Lane, Off Whites Road,
Royapettah, Chennai – 600 035. ...1st Respondent/Claimant

2. Mrs Amulu H.

3. Mr. Harinath M.S.

4. M/s JO Ventures Private Ltd.,
No. 33/69, Hemavathi Complex,
Paper Mills Road, Sembium,
Perambur, Chennai - 600 011 Respondents
3 to 5/Respondents
2 to 4



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Prayer : THIS PETITION HAS BEEN FILED UNDER SECTION 34(2)(a)(iv) & 34(2)(b)(ii) OF THE ARBITRATION AND CONCILIATION ACT, 1996 seeking for the following reliefs :-

a) To set aside the award dated 13.04.2022 made in Arbitration Case No.SSP/CWTPL/01 of 2021 passed by the sole Arbitrator Dr.S.S.P.Darwesh in its entirety.

b) To direct the respondent to pay the cost and

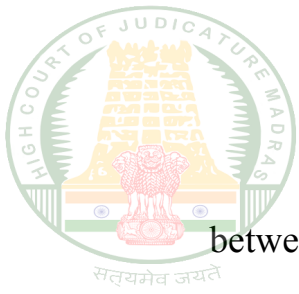
c) To grant such further reliefs as this Court may deem fit

For Petitioner : Mr.S.L. Sudarsanam
For Respondents : Set Ex-parte

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned Arbitral Award, dated 13.04.2022 passed against the petitioners.

2. The 1st respondent is the claimant in the arbitration pursuant to which, the impugned Arbitral Award came to be passed against the petitioners. The petitioners and the respondents 2 to 4 were the respondents, in the arbitration. A Franchise Agreement was entered into



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between the petitioners and the 1st respondent on 06.10.2020. On account of Covid-19 Pandemic, within three months from the date of the said agreement, since the petitioners could not carry on business, terminated the Franchise Agreement, dated 06.10.2020 entered into with the 1st respondent. The 1st respondent is the Franchisor and the petitioners are the Franchisees under the Franchise Agreement, dated 06.10.2020.

3. The 1st respondent made an arbitral claim against the petitioners as well as the respondents 2 to 4, who are the owners of the property in which, the subject outlet was located claiming various reliefs. Earlier, the 1st respondent has filed a civil suit before this Court against the petitioners and the respondents 2 to 4 seeking damages for a sum of Rs.1 Crore. Since there exists an arbitration clause in the Franchise Agreement, dated 06.10.2020, by consent of all the parties to the suit, an Arbitrator was appointed in the said civil suit by this Court, who has passed the impugned Arbitral Award :-

4. The Arbitrator under the impugned Arbitral Award had issued the following directions against the petitioner as well as the respondents 2 to 4.

- a) Granting an order of permanent injunction against the petitioners and the 4th respondent by directing them that



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they shall not either directly or indirectly carry on business of similar nature as that of the 1st respondent within 2 kms of radius from Perambur outlet.

b) The 1st respondent is entitled to recover Rs.94,051/- towards the amount payable by the petitioners and the 4th respondent with interest at the rate of 18% p.a.

c) Granted an order of permanent injunction restraining the petitioners and the 4th respondent to operate any business like that of the 1st respondent for a period of two years from the date of filing of the earlier suit using FSSAI licence of the 1st respondent.

d) The 1st respondent is entitled to recover a sum of Rs.75,00,000/- from the petitioners and the 4th respondent by way of damages together with interest at 18% p.a. from the date of termination of the agreement.

5. The petitioners have challenged the impugned Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 on the following grounds :-

a) The Arbitral Tribunal has gone beyond the scope of the arbitration agreement contained in the Franchise



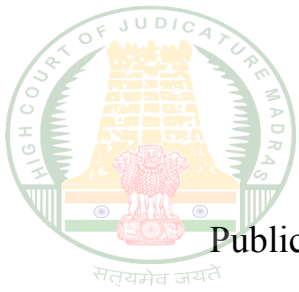
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Agreement, dated 06.10.2020, by taking into consideration the terminated Lease Agreement, dated 07.10.2020 which does not contain an arbitration clause.

b) The Arbitral Tribunal has passed the impugned Arbitral Award in violation of the statutory provisions of the Contract Act, which makes it clear that non-compete clause is invalid and violative of Article 19(1) (g) of the Constitution.

c) The damage claim for a sum of Rs.75,00,000/- awarded by the Arbitral Tribunal lacks reason and the same has been awarded without any evidence whatsoever.

6. The respondents were duly served with the notice in this petition. Earlier, the 1st respondent alone was represented by a learned counsel but the remaining respondents chose not to enter appearance in this petition, despite notice having been served on them. The learned counsel, who had entered appearance on behalf of the 1st respondent also gave change of vakalat and thereafter fresh notice was ordered to the 1st respondent, but since the said notice could not be served, this Court had ordered Substituted Service by directing the petitioners to effect Paper

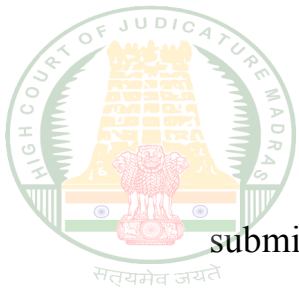


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Publication on the 1st respondent. Substituted Service was also taken by the petitioners in accordance with the directions issued by this Court but despite the same, the 1st respondent failed to enter appearance. Hence, the 1st respondent is set ex-parte by this Court. The remaining respondents have also been set ex-parte by this Court.

7. The learned counsel for the petitioners drew the attention of this Court to the plaint filed in C.S. No.89 of 2021 filed before this Court by the 1st respondent against the petitioners and the respondents 2 to 5 seeking for a claim of Rs.1 Crore by way of damages for the termination of rental agreement as well as the Franchise Agreement. He would submit that since there exists an arbitration clause in the Franchise Agreement, dated 06.10.2020, this Court by its judgment, dated 28.04.2021 passed in C.S. No.89 of 2021 with the consent of all the parties appointed an Arbitrator to adjudicate the dispute between the parties.

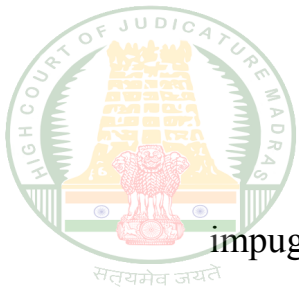
8. The learned counsel for the petitioners then drew the attention of this Court to the claim statement filed by the 1st respondent before the Arbitrator who has passed the impugned Arbitral Award and would



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submit that within a period of two months from the date of the judgment passed in C.S. No.89 of 2021, i.e. in the month of June 2021, a claim petition was filed by the 1st respondent claiming a sum of Rs.3 Crores from the petitioners and the respondents 2 to 5 though in the plaint filed in C.S. No.89 of 2021, the claim was only for a sum of Rs.1 Crore. According to the learned counsel for the petitioners despite raising all defences, which includes the contention of the petitioners that the claim of the 1st respondent before the Arbitral Tribunal is an inflated claim, the Arbitrator has passed the impugned Arbitral Award by total non application of mind and also by not giving reasons as to how the Arbitrator has come to the conclusion that the petitioners and the respondents 2 to 4 are liable to pay damages to the 1st respondent at Rs.75,00,000/-.

9. The learned counsel for the petitioners also drew the attention of this Court to the Lease Agreement, dated 07.10.2020, which is a tripartite Agreement between the petitioners as Franchisees; the 1st respondent as a consulting third party and the respondents 2 & 3 as the land owners. He would submit that there is no arbitration clause found in the said Lease Agreement, but however, the arbitrator under the



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impugned Arbitral Award has also taken into consideration the contents of the Lease Agreement and has also rendered a finding with regard to the same while passing the impugned Arbitral Award.

10. The learned counsel for the petitioners would submit that when the Lease Agreement, dated 07.10.2020 does not contain an arbitration clause and further when the said Lease Agreement does not refer to the Franchise Agreement, dated 06.10.2020 entered into between the petitioners and the 1st respondent, the Arbitrator under the impugned Arbitral Award by total non application of mind has also taken into consideration, the contents of the Lease Agreement, dated 07.10.2020 for the purpose of awarding damages for a sum of Rs.75,00,000/- against the petitioners and the respondents 2 to 4.

11. The learned counsel for the petitioners would also submit that the non-compete clause is an invalid clause and violative of Article 19(1) (g) of the Constitution and despite the said fact without there being any such restriction existing in the arbitration agreement / Franchise Agreement entered into between the petitioners and the 1st respondent, the Arbitrator has passed the impugned Arbitral Award imposing restrictions on the petitioners from carrying on its business.



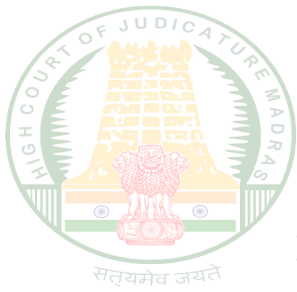
WEB COPY 12. The learned counsel for the petitioners would also submit as seen from the impugned Arbitral Award that the Arbitrator has awarded a sum of Rs.75,00,000/- as damages in favour of the 1st respondent without any evidence whatsoever. He would also submit that to prove damages, the 1st respondent ought to have produced oral and documentary evidence but even without any oral and documentary evidence, the Arbitrator has awarded damages of Rs.75,00,000/- in favour of the 1st respondent against the petitioners and the respondents 2 to 4 arbitrarily and by total non application of mind.

13. The learned counsel for the petitioners would further submit that the petitioners have terminated the contract only due to Covid-19 Pandemic, within a period of three months from the date of the contract and the petitioners have not generated any income out of the said business. He would further submit that the Arbitrator also did not take into consideration the said fact while passing the impugned Arbitral Award.

Discussion :-

14. The following are the undisputed facts :

a) Originally, the 1st respondent made a claim against the



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petitioners and the respondents 2 to 4 through a civil suit filed before this Court in C.S. No.89 of 2021 in which, the 1st respondent had made a claim only for a sum of Rs.1 Crore.

b) The dispute which was the subject matter of C.S. No.89 of 2021 was referred to an Arbitrator appointed by this Court in C.S. No.89 of 2021 by the mutual consent of the parties to the dispute.

c) In the arbitral claim made by the 1st respondent against the petitioners and the respondents 2 to 4, the 1st respondent has inflated the claim from Rs.1 Crore to Rs.3 Crores.

d) The Lease Agreement, dated 07.10.2020 does not contain an arbitration clause. The said Lease Agreement also does not specifically refer to the Franchise Agreement, dated 06.10.2020.

e) The petitioners did not file their statement of defence to the main arbitral claim made by the 1st respondent. They only filed a counter to Section 17 application filed by the 1st respondent seeking for an injunction against the petitioners not to operate a similar outlet, within 2 kms radius. However, no



injunction was granted by the Arbitrator in the Section 17

WEB COPY application filed by the 1st respondent.

15. The learned counsel, who had entered appearance on behalf of the petitioners before the Arbitrator withdrew his appearance, thereafter, no new counsel had entered appearance on behalf of the petitioners before the Arbitrator. The impugned Arbitral Award is an ex-parte Award though the Arbitrator in the impugned Arbitral Award has not specifically set the petitioners ex-parte in the arbitral proceedings.

16. As seen from the impugned Arbitral Award, the Arbitrator has awarded a hefty sum of Rs.75,00,000/- against the petitioners and the respondents 2 to 4 by way of damages for the termination of the Franchise Agreement by the petitioners. As seen from the impugned Arbitral Award, there is absolutely no evidence placed on record before the Arbitrator to enable the Arbitrator to come to the conclusion that the 1st respondent is entitled for a sum of Rs.75,00,000/- by way of damages from the petitioners and the respondents 2 to 4. Being a damage claim, the 1st respondent, ought to have let in evidence, both oral and documentary before the Arbitrator, which the 1st respondent had



miserably failed to do so as seen from the impugned Arbitral Award.

As seen from the plaint filed in C.S. No.89 of 2021, the 1st respondent had made a claim against the petitioners and the respondents 2 to 4 only for a sum of Rs.1 Crore, but however, when the dispute was referred to arbitration since there exists an arbitration clause in the Franchise Agreement, pursuant to orders passed in C.S. No.89 of 2021, within a period of three months from the date of the said order, when the claim petition was filed by the 1st respondent before the Arbitrator, the 1st respondent has inflated the claim to Rs.3 Crores.

17. It is also an undisputed fact that the petitioners only on account of Covid – 19 Pandemic had to close down the Franchisee business and had to terminate the contract with the 1st respondent. The petitioners also claim that they were operating the business only for a period of three months. Therefore, the Award of Rs.75,00,000/- by way of damages by the Arbitrator against the petitioners is arbitrary and is also not supported by any evidence whatsoever. The 1st respondent has also not let in any oral evidence before the Arbitrator.

18. This Court can interfere with the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996, if the Award has been passed without any evidence. In the case on hand, the petitioners have



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been directed to pay a compensation of Rs.75,00,000/- to the 1st respondent on account of the damages suffered by the 1st respondent which is not supported by any oral or documentary evidence.

19. Admittedly, the Lease Agreement, dated 07.10.2020 does not contain an arbitration clause. However, by total non application of mind, the Arbitrator under the impugned Arbitral Award for coming to the conclusion has relied upon the terms and conditions of the Lease Agreement dated 07.10.2020 as well. In the Lease Agreement, dated 07.10.2020, there is also no specific reference to the Franchisee Agreement, dated 06.10.2020 entered into between the petitioners and the 1st respondent. Erroneously by total non application of mind, the Arbitrator has relied upon the terms and conditions of the Lease Agreement, dated 07.10.2020, which does not contain an arbitration clause for the purpose of coming to the conclusion that the petitioners are liable to pay the impugned award amount. The Lease Agreement is an unregistered agreement. The term of the lease is for a period of nine years and therefore, the said document is compulsorily registrable. Unless and until the Lease Agreement is a registered document, the Arbitrator ought not to have taken into consideration the contents of the same. When the Lease Agreement, dated 07.10.2020 does not contain an



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arbitration clause and it is an unregistered document, which is not admissible in evidence, the Arbitrator ought not to have taken into consideration the contents of the Lease Agreement, dated 07.10.2020 for the purpose of arriving at the conclusion reached by him in the impugned Arbitral Award. In a claim for damages, the claimant must prove beyond through oral and documentary evidence that they are entitled for damages from the respondents. The investment made by the petitioners with the 1st respondent was by way of a deposit made with the 1st respondent for a sum of Rs.4,50,000/- under the Franchise Agreement, dated 06.10.2020. As per the Franchise Agreement, dated 06.10.2020, the revenue generated from the business will have to be shared between the petitioners and the respondents in the specified ratio as stipulated in the Franchise Agreement, dated 06.10.2020. When the investment of the petitioners is only Rs.4,50,000/- and the petitioners having been unable to run the business on account of Covid-19 Pandemic and having terminated the contract within a period of three months from the date of the Franchise Agreement, it is surprising as to how the Arbitrator under the impugned Arbitral Award has awarded a hefty sum of Rs.75,00,000/- as damages in favour of the 1st respondent against the petitioners and the respondents 2 to 4 without any supporting evidence whatsoever.



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20. For the foregoing reasons, the impugned Arbitral Award suffers from patent illegality and is also opposed to public policy of India coming within the purview of Section 34 of the Arbitration and Conciliation Act, 1996 as the impugned Arbitral Award has gone beyond the scope of the contract, which contains an arbitration clause, viz., the Franchise Agreement, dated 06.10.2020.

21. In the result, the impugned Arbitral Award is hereby set aside by this Court and this petition is allowed. However, liberty is granted to both the parties to initiate fresh arbitration in accordance with law and the time spent before the Arbitral Tribunal as well as this Court shall stand excluded for the purpose of saving limitation under Section 14 of the Limitation Act, 1963.

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