



O.S.A.Nos. 279 & 304 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2025

PRONOUNCED ON : 24.03.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

O.S.A.Nos.279 & 304 of 2022 and
C.M.P.Nos.558 & 559 of 2025 and
C.M.P.Nos.20654 & 18434 of 2022 and
C.M.P.Nos.24557 & 24558 of 2023

O.S.A.No. 279 of 2022

M/s. Custodial Services India Private Limited,
Basement “Kalyan”, No.4,
Atkinson Palace, Jyothi Venkatacallum Road,
Vepery, Chennai – 600 007.

.. Appellant

VS

M/s. Metafilms (India) Ltd.,
157/1, GNT Road, Chinnambodu PO,
Kavarapet – 601 206.

.. Respondent

Prayer in O.S.A.No. 279 of 2022: Appeal filed under Order XXXVI Rule
1 of O.S. Rule and Clause 15 of Letters Patent against the order dated
07.07.2021 made in A.No.1081 of 2021 in O.P.No. 378 of 2021.

O.S.A.No. 304 of 2022:



O.S.A.Nos. 279 & 304 of 2022

M/s. Custodial Services (India) Private Limited,
Having its registered office at
Basement “Kalyan”, No.4,
Jyothi Venkatacallum Road,
Vepery, Chennai – 600 007.

.. Appellant

VS

M/s. Metafilms (India) Ltd.,
157/1, GNT Road, Chinnambedu PO,
Kavarapet – 601 206,
Tamil Nadu.

.. Respondent

Prayer in O.S.A.No. 304 of 2022: Appeal filed under Order XXXVI Rule 1 of O.S. Rule and Clause 15 of Letters Patent to set aside order dated 23.07.2021 made in O.P.No.378 of 2016.

(in both appeals)

For Appellant : Mr.R.Subramanian
for M/s.G.Rajathi

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

These Original Side Appeals have not been admitted thus far, though numbered as early as in 2022. The appellant assails an order passed on 07.07.2021 in A.No.1081 of 2021 in O.P.No.378 of 2016 (OSA.No.279 of 2022) and an order passed on 23.07.2021 dismissing O.P.No.378 of 2016 (OSA.No.304 of 2022).

2.The Original Petition (O.P.No.378 of 2016) had been filed by the appellant under Section 11 of the Arbitration and Conciliation Act, 1996 ('A & C Act, 1996') seeking appointment of an Arbitrator in terms of



Agreement dated 31.07.1997 ('Agreement') entered into between itself and the respondent in Original Petition and for connected directions.

3.In that Original Petition, an order had been passed on 15.12.2016 after hearing both the parties, directing the parties to lead evidence including oral evidence in regard to the legality, validity and existence of the arbitration agreement on the basis of which the prayer to appoint an Arbitrator was premised.

4.The parties have been appearing before the learned Master till 2018 and thereafter according to the appellant, the matter has not come up for hearing before the learned Master. While so, the appellant has filed an application (A.No.2105 of 2017) where the prayer was that, de hors the enquiry directed to be recorded by order dated 15.12.2016, the Court may proceed with the enquiry in O.P.No.378 of 2016 based on the records of the case.

5.Pleadings were completed in that application which ultimately came to be dismissed with costs on 07.07.2021. Inter alia, the Court has recorded the submissions of the appellant relying on the judgment of the Supreme Court in *Vidya Drolia and others v. Durga Trading Corporation* [(2020) SCC Online SC 1018] to the effect that, while deciding applications under Sections 8 and 11 of the A & C Act, the only



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material examination would be in regard to the existence of an arbitration agreement and nothing beyond.

6. It is relying on that judgement, that the appellant prayed that order dated 15.12.2016 may be eschewed and hearing of O.P.No.378 of 2016 continue even without recording of evidence. Before us, this submission is reiterated, the appellant submitting that the amendment on the basis of which the judgment in *Vidya Drolia* (supra) was rendered has been made in 2015, rendering even the directions under order dated 15.12.2016 unnecessary.

7. The counter filed by the Respondent in A.No.1081 of 2021 sets out the trajectory that the events have taken and the relevant portions are extracted below:

'4. After the case was referred to Trial, the Applicant had filed its Affidavit in Chief through Mr.B.Rajendra Kumar as PW-1 to let in evidence and Chief Examination of PW1 was recorded on 11.01.2017 & 12.01.2017. During the course of cross-examination on 30.01.2017, PW-1 admitted that Mr.R.Subramanaian is the master puppeteer of the Petitioner and that he was present in Court at that said point of time. It is the case of the Respondent, that one R.Subramanian is the kingpin in the matter and was a witness to the present dispute. R.Subramanian who was present in the Court was prompting the answers to the PW-1 which despite objections was being constantly interfered with by the Applicant / Plaintiff.

5. In such circumstances, the Respondent herein was constrained to file an Application vide A.No. 663 of 2017 to



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prohibit Mr.R.Subramanian from participating in the present proceedings as Counsel for Respondent and also prohibit from being present during the cross examination of PW1 or any other witness during course of cross-examination. The Respondent seeks the leave of this Hon'ble Court to refer to the Application filed by Counter. Initially, taking note of the Application filed by the Respondent, this Hon'ble Court vide order dated 03.02.2017, stayed the proceedings before the Hon'ble Master pending the disposal of A.663 of 2017.

6. On the very same day, i.e, 03.02.2017, an order was passed by this Hon'ble Court dismissing an application vide A.No 665 of 2017 filed by the Applicant herein to discover certain documents. Yet another application vide A. 1008 of 2017 was filed by the Respondent to review the order dated 03.02.2017 passed in A.665 of 2017 by this Hon'ble Court. This Hon'ble Court was not pleased to review its order dated 03.02.2017 passed in A.No. 665 of 2017 and dismissed A.No.1008 of 2017 on 17.02.2017.

7. Thereafter, yet another application vide A.No. 2105 of 2017 was filed by this Applicant herein to revoke the Vakalath for the Respondent Company & A. No 664 of 2017 was filed to serve interrogatories on the Respondent herein. These applications are still pending.

8. At this stage, this Hon'ble Court vide order dated 29.01.2018, recorded submission of R.Subramanian that he undertakes not to participate in the proceedings before the Learned Master as Counsel for Respondent and also not to be present either during the Cross examination of PW1 of any other witness as the Petitioner wishes to call upon. Recording the above undertaking, this Hon'ble Court directed the parties to be present before on 06.02.2018 on a proximate date to conclude the proceedings as expeditiously as possible.

9. When the case was thereafter listed before the Learned Master on 12.03.2018, PW 1 was not present. When the matter was taken up on 19.03.2018, PW 1 sought for



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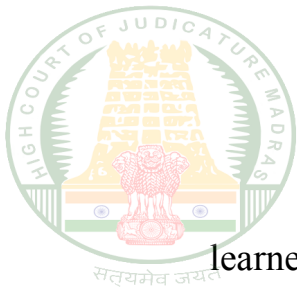
adjournment citing absence of his Counsel. As there was a specific direction by order dated 29.01.2018 of this Hon'ble Court, the Hon'ble Master by order dated 19.03.2018 directed the case to be listed before this Hon'ble Court for appropriate orders. This Hon'ble Court by order dated 24.07.2018 was pleased to extend the time for recording evidence and directed that it may be completed before 30.08.2018.

10. When the case was taken by the Master on 16.08.2018, the case was adjourned to 24.08.2018 as PW-1 was not available. Yet again, when the matter was listed on 08.01.2019 & 24.01.2019, PW-1 was absent and as last chance was posted on 11.02.2019.

11. It was this stage, this Hon'ble Court vide order dated 14.03.2019 made it clear that that PW-1 is bound to be present on 27.03.2019 for examination, failing which the evidence of Petitioner can be closed. On 05.04.2019, this Hon'ble Court granted a last opportunity to PW-1 to be present before the Master and made it clear that in case he chooses not to appear, this Hon'ble Court will consider issuing Non-Bailable Warrant against PW 1.

12. On 09.04.2019 cross examination of PW-1 was carried out and on 16.04.2019, it was concluded. The Petitioner on 16.04.2019 sought time to tender further evidence. Instead of tendering any further evidence or informing the Court that the evidence was complete on his side, the Petitioner after 2 years has filed the present application to proceed with enquiry in the main O.P. dehors the evidence recorded by this Hon'ble Court. In this present application, the Applicant avers that there is no ambiguity that there is an Arbitration Agreement duly executed between the parties. Such a statement is absolutely false, as this Hon'ble Court was pleased to refer the matter to trial, only upon the parties consenting to lead in evidence, in view of the complex issue involved pertaining to legality, validity and existence of Arbitration Agreement itself.'

8. Having considered the rival submissions of the parties, the



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learned Judge records the entire trajectory of events that had transpired in the matter. The Appellant had earlier filed A.No.665 of 2017 seeking discovery of documents that had come to be dismissed on 03.02.2017. Not content with that order, A.No.1008 of 2017 came to be filed seeking review of order dated 03.02.2017. The aforesaid orders that have been taken note of in the impugned order are extracted below in the interests of completion:

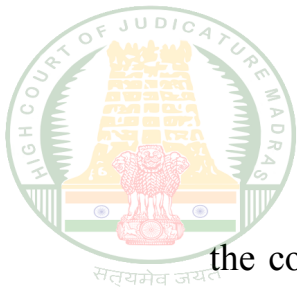
'Order in A.No.665 of 2017 dated 03.02.2017.'

"The application has been filed seeking discovery of documents from the respondent as set out in Schedule I. An exhaustive list of documents are sought in respect of functioning of the respondent company, its accounts, its loans, its transactions, while the only issue on trial is the validity and existence of the arbitration agreement as it falls within the scope of Section 11 of the Arbitration and Conciliation Act, 1996.

2. I am of the view that there is a mistaken belief as if the merits of the case will be decided here and thus, this application is not liable to be entertained.

Application is dismissed."

9. In the course of that hearing, an objection had been taken by the Respondent vide an Application in A.No.1008 of 2017 to the appearance of Mr.R.Subramaniam. To be noted that it is the same person who appears in this matter today before us. Incidentally, we have verified the Vakalathnama filed in the matter and do not find his name therein. Only the names of M/s.G.Rajathi and T.Sugirtha figure therein who are thus



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the counsel on record. The matter had ultimately come to be dismissed by order dated 17.02.2017 in terms of the aforesaid order:

“10.
.....After the exhaustive submissions by learned counsel, Mr.R.Subramaniam agrees and undertakes not to participate in the proceedings before the Master as counsel for the respondent and also not to be present either during the cross examination of PW1 or any other witness as the respondent may wish to call upon. Recording the above undertaking, and in view thereof, the proceedings before the Master may continue on 06.02.2018 or on a date proximate to the same as may be convenient to the Court as well as the parties. The Master may conclude the proceedings as expeditiously as possible, seeing as the Original Petition is of the year 2016.”

10. As rightly recorded by the learned Judge, the above stillborn attempts were only to ensure that the counsel representing the applicant would be present during the examination of witnesses before the learned Master. In order dated 17.02.2017 it has been recorded that Mr.R.Subramaniam, would not participate in the proceedings before the learned Master as a counsel for the respondent therein.

11. The matter was thereafter listed for hearing on the basis of the above undertaking, on 14.03.2019, 04.04.2019 and finally on 05.04.2019 as a final opportunity to the appellant to examine himself as PW1, ultimately taken up on 22.01.2021.

12. The learned Judge was thus of the view that the conduct of the



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petitioner made it more than amply clear that the attempts were solely to protract the proceedings and nothing more. He also takes note of the position that the Hon'ble the Chief Justice, taking note of the serious allegations in the pleadings had directed the signatories of the agreement to be present in the Court to which there was no compliance.

13. It is only thereafter that the parties were directed to record evidence to get to the bottom of whether the Arbitration Agreement exist. That order has attained finality as on date. It is in light of the aforesaid vexed trajectory that the application has come to be dismissed putting the appellant to costs. The costs have not been remitted thus far.

14. Before us, Mr.Subramanian, would only reiterate the submissions assailing order dated 15.12.2016. We reject those submissions outright as being wholly misplaced. The appropriate remedy as against order dated 15.12.2016 was by way of an appeal to the Supreme Court which remedy has not been availed. Having allowed that order to attain finality, there is no justification in the plea in the A. No.1081 of 2021 praying that the hearing of the O.P. proceed eschewing the directions in that order. We reject this argument categorically.

15. The Appellant has relied upon the case of *Om Prakash Gupta vs. Ranbir B. Goyal* ((2002) 2 SCC 256) rendered in the context of rent



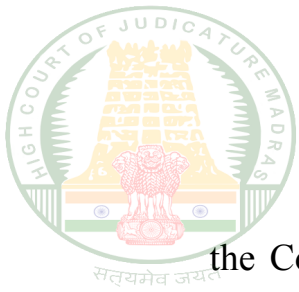
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control laws and tenancy rights. Specific reliance is for the proposition that though the rights of the parties stand crystalised as on the date of institution of the suit, subsequent events and changes, both in law and on facts must be taken note of the parties. This case is of no assistance to the Appellant.

16. In the present case, a preliminary question to be decided is as to whether at all the Agreement contains a valid Arbitration clause. It is only thereafter that the question of arbitration, can be addressed. However, the proceedings are being thwarted even at that nascent stage by the Appellant. The series of vexatious Applications filed by him have all been dismissed and those orders have become final.

17. There have been repeated requests for adjournments, all pointing to the inevitable fact that the Appellant is insistent on delaying matters, and is not bonafide, but rather mischievous in his approach. This is hence not the appropriate matter for the legal plea to be considered. Instead of proceeding with the matter in terms of the directions issued in order dated 15.12.2016 which was a consent order, the appellant has been repeatedly procrastinating, effectively frustrating the proceedings.

18. Applications have now been filed before us seeking permission to raise additional grounds to the effect that the matter should go before



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the Commercial Court. The Appellant argues that the very basis of the impugned order is vitiated as according to him the matter should have been heard by the Commercial Court and the learned Judge who had heard it was Coram Non Judge.

19. The argument on jurisdiction has been raised for the first time in the proceedings although the matter was initiated as early as in 2016, and that too, only at the instance of this Appellant. The attempt is obviously to procrastinate further, though it is unclear, to what end. We are thus categorically disinclined to consider such a prayer at this juncture of time, when countless applications have been both filed by this Appellant as well as defended by him before this Court.

20. This a classic case of abuse of an alternate mode of dispute resolution which is expected to yield prompt results when compared with traditional methods of dispute resolution. We do not propose to encourage this travesty any further and dismiss not just the Applications but the Appeals in limine.

21. While confirming the dismissal of A.No. 1081 of 2021 by the learned Judge by order dated 07.07.2021, we enhance the cost imposed to a sum of Rs.50,000/- (Rupees fifty thousand only), payable to the Chief Justice Relief Fund. Connected miscellaneous petitions are also



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dismissed.

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22. We are also not inclined to consider the submission of Mr.Subramanian to the effect that he may be permitted to remit the enhanced costs and re-agitate the Original Petition. This submission falls foul of his conduct in these proceedings which militates against the very purpose, object and spirit of arbitration proceedings.

[A.S.M., J] [C.K., J]
24.03.2025

Index:Yes
Speaking Order
Neutral Citation:Yes
vs

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



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O.S.A.Nos. 279 & 304 of 2022

DR. ANITA SUMANTH.,J.
and
C.KUMARAPPAN.,J.

VS

O.S.A.Nos. 279 & 304 of 2022

24.03.2025