IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.01.2025

Pronounced on : 24.01.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

ARB APPLN NO. 910 OF 2024
in O.A.No.953 of 2024

Chennai Metro Rail Limited, Represented by
Chief Manager (P and BD)
MetroS Anna Salai Nandanam, Chennai.

Appellant(s)

Vs

SIMS Institute for Medical Science Pvt Ltd
(Represented by its Vice President Dr.Raju
Sivasamy)
MetroS Anna Salai Nandanam, Chennai.

Respondent(s)

For Applicant(s):
Raghavendra Ross Divakar
for M/s.S.Arjun Suresh

For Respondent(s): A.V.Arun

ORDER

In O.A.No.953 of 2024, in and by an order dated 12.12.2024, I have granted an interim injunction in favour of the respondent herein restraining the applicant herein from dismantling, removing, tampering with or relocating or damaging the signage erected by the respondent in the Alandur Metro Station premises.

2.The Chennai Metro Rail Limited/the applicant (herein after called as CMRL) has come up with the application to vacate the said interim injunction.

3.Mr.Raghavendra Ross Divakar, learned counsel for M/s.S.Arjun Suresh, learned Standing Counsel for CMRL would contend that the respondent had approached this Court with unclean hands, suppressing material facts and circumstances and obtained an interim injunction. He would take me through the original agreement between the parties which is dated 20.10.2023 and refer to relevant clauses agreed upon between the parties thereunder. He would also refer to Annexure - II at Serial No.7 which clearly imposes a ban on any advertisement. He would next refer to clauses 4.7, 8.4, 11.5 and 11.6 and contend that the applicant has projected a false case before this Court and obtained an ex-parte interim injunction. The learned counsel would also refer to certain documents which were not brought to the notice of this Court at the time of grant of an interim injunction. He would therefore submit that the applicant has come to the Court with unclean hands and has not made out *prima facie* case for grant of an interim injunction. He would therefore seek for the injunction being vacated as prayed for. The learned counsel for the CMRL would also rely on the following decisions:

> *1.Omkar Tradecomm LLP and Others Vs. Mayank Agarwal and Others ((2023) SCC Online Cal 1469).*
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> *2.High Court Bar Association, Allahabad Vs. State of U.P and Others ((2024) 2 MLJ 145).*

4.Per contra, Mr.A.V.Arun, learned counsel appearing for the respondent would contend that there has been no suppression. He would in fact place reliance on Whatsapp messages exchanged between the parties which according to the learned counsel for the respondent, would clearly evidence that the respondent had the approval of CMRL and therefore, having approved the drawings, it is not open to the applicant to now seek for vacating the interim injunction order and thereby interfere with the signage put up by the respondent. The learned counsel for the respondent would place reliance on the following decisions in support of his contention:

> *1.Essar House Private Limited Vs. Arcellor Mittal Nippon Steel India Limited (2022 SCC Online SC 1219).*
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> *2.Brij Raj Oberoi Vs. Secretary, Tourism and Civil Aviation Department and Another ((2022) 17 SCC 81).*

5.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the decision on which reliance is placed on by the learned counsel on either side.

6.There is no dispute that the applicant and the respondent entered into an agreement on 20.10.2023 and it pertains to a grant of license to the respondent. It is in an as is where is basis, on payment of license fee and other charges to the applicant for commercial utilization of the pre-identified commercial spaces by CMRL. In and by the said agreement, the respondent had taken up the responsibility of setting up retail pharmacies at various Metro stations and operate the same at its costs. The said agreement contains several clauses. The following relevant clauses are being extracted hereunder for easy reference:

> *4.1.2. Contents of Submission:*
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> *...... b) Preliminary Floor Plans: Indicating interior layout and all materials and finishes. All new works shall be coloured (in dark colour). All existing works proposed to be demolished or dismantled shall be shown in broken lines.*
>
> *d) Elevations and Sections: showing concept, main entrances, front entrances including any graphics and singages. Indicate all materials, finishes and metod of fixing with all materials and finishes indicated.*
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> *4.7.Operation of commercial spaces:*
>
> *s. Permissible Usage of commercial Spaces: Spaces can be put for any activity except banned list of usage mentioned in Annexure-II following the other terms and conditions of this agreement. The License may be permitted to change the usage of space during the currency of license subject to prior written approval of CMRL. The License shall be responsible for taking prior approval from all the relevant legal and statutory authorities as per the applicable laws for operation of its business.*
>
> *8.4. Breach of License Agreement 8 Licensee's Events of Default:*
>
> *n) If the licensee violates banned usage as per list given in Annexure – II.*
>
> *11.5.Misuse: The Licensee shall use the licensed space under the agreement only for those services provided therein as permissible under CMRL (O&M) administration, except the same for any other purposes. In*

case, the Licensee carries on any business or uses the said premises for any other purposes the incense shall deemed to have been misused and CMRL (Licensor) shall immediately terminate the said agreement. All liabilities for misuse charges and misuse proceedings; if so initiated shall be that of the Licensee only. The License shall indemnify and keep indemnified CMRL for any losses/penalties on this account levied by any judicial/statutory authorities/Courts.

11.6.Signage:

a) The Licensee shall have the right to put up only one signage os suitable size for displaying its generic name of office space. The signage may be illuminated or non-illuminated at the Licensee's option, however it shall need to confirm to all governmental laws, regulations or ordinance relevant thereto.

b) The Licensee shall need to obtain a written approval from CMRL before putting up any form of signage and CMRL reserves the right to refuse or to suggest an alternation to the same. The signage shape and location etc are subject to architectural controls to be issued by CMRL.

c) Placement of Signage without the permission of CMRL or placement in non approved locations shall attract a penalty of Rs.5000/- per signage on the first occasion and Rs.50,000/- per signage on the second occasion. In case of persistence default, CMRL reserve the right to terminate the agreement with forfeiture of the (interest free) Security Deposit and advance license fees paid in its favour.

d) No advertisement in any format shall be permitted in/on the Licensed Spaces.

7.The respondent is certainly bound by the above terms and conditions. According to the respondent, there is no violation and they have already obtained the approval of the applicant / CMRL for the signage that has been put up at Alandur Metro Station. Apart from the Whatsapp messages exchanged between the applicant and Mr.Ramkumar, Assistant Manager, Planning and Business Development, CMRL and two documents, namely the Email dated 15.07.2024 which speaks about drawing approval for Alandur Metro Station, SIMS Pharmacy, there is no other express document which evidences the fact that there has been a conscious approval of the existing signage that has been put up by the respondent.

8.According to the learned counsel for the respondent, the Email dated 15.07.2024 which also contains the drawing over the page in the typed set of papers would clearly show that the applicant had approved the drawing of the respondent. Further, when pictures of the site were forwarded to Mr.Ramkumar, Assistant Manager, CMRL and he had referred to the photographs and complimented the respondent with the words "nice work at Alandur Station”. Referring to the same, the learned counsel for the respondent would contend that it was not only a case of approval but also appreciation at the end of the applicant and therefore, the applicant was clearly estopped from now going back and claiming violation of the terms and conditions. He would further submit that these issues can only be decided after the parties lead evidence before the Arbitrator and at this juncture, the injunction already granted by this Court should not be disturbed.

9.The primordial contention of the learned counsel for CMRL is that there is a clear prohibition from advertisements being put up and in violation of the same, the applicant has put up "Hello Doctor" service advertisements. The learned counsel for the applicant would further contend that though it is claimed by the respondent's counsel that it is not an advertisement but only a public awareness / announcement and emergency contact number, according to the learned counsel for the applicant, the phone number provided in the “Hello Doctor” service is only that of the respondent's hospital and therefore, it would clearly amount to violation of the terms and conditions of the agreement dated 20.10.2023. The Email which is relied on by the learned counsel for the applicant i.e., 15.07.2024 does not refer to the approval of the signage which is independently contemplated under the agreement.

10.The applicant has filed a typed set of papers containing the exchange of letters/Emails between the parties. In and by a letter dated 29.08.2023, the respondent had given its offer for setting up pharmacies in the earmark commercial spaces at various Metro Stations. In and by Email dated 02.09.2024, the applicant had brought to the notice of the respondent four violations. One of the said observations was pertaining to the subject signage at Alandur Metro Station being big and required to be standardized. In response to the same, the Chief Operating Officer of the respondent has replied to the applicant stating that he would discuss the issue with the of the Vice President and meet in person for further discussion. Thereafter, on 10.09.2024, the applicant has again written to the respondent stating that despite the earlier Email, only the advertisement at Vadapalani Metro Station SIMS pharmacy/panel has been removed and the big signage at Alandur Metro Station with "Hello Doctor" advertisement is continuing to violate the agreement clauses. In response to the said Email, on the same day, the respondent has replied stating that necessary actions are initiated and updates would be given to CMRL, finding that there has been no action taken on the complaints.

11.The applicant has again e-mailed the respondent on 24.09.2024 requesting the respondent to remove the signage which is in violation of the terms and conditions. In response to the said Email, the letter of the Vice President by the respondent dated 25.09.2024 has been sent to the applicant. In the said letter, the applicant has only stated that since 5 to 6 accidents occurred between Airport and Guindy and only in order to help the victims, the emergency Ambulance number to help the public has been put up at Alandur Metro Station. The typed set of papers filed by the applicant also evidences the fact that at other metro stations, the respondent has complied with the violations pointed out by the applicant, excepting Alandur Station, in respect of which the present dispute is raised.

12.As rightly pointed out by the learned counsel for the applicant, excepting the last of the communications, namely the Email dated

24.09.2024, the earlier letter / Email exchanged between the parties have not even been referred to in the affidavit filed in support of the injunction application, leave alone the copies of the said correspondence being enclosed along with the injunction application. *Prima facie*, this leads to a presumption that the respondent has suppressed material documents from this Court.

13.Even otherwise, with regard to the claim of approval having been granted by the applicant, in the light of the several Emails addressed by the applicant to the respondent specifically complaining about the signage at Alandur Metro Station, citing an advertisement by way of "Hello Doctor" service, the contention of the respondent that by Email, the applicant has granted approval has to be looked into. The drawing which is attached to the said approval Email contains only floor plan, front side elevation and front section lintel details. I do not find the signage having been approved vide the said Email dated 15.07.2024.

14.In this regard, relevant clauses which have been extracted herein above also contemplates the respondent obtaining a written approval from the applicant before putting up any form of signage. In the present case, it is already seen that soon after the respondent put up the signage, the applicant has raised objections and called upon the respondent to remove the said signage, which is in violation of the terms and conditions agreed upon by the applicant and the respondent under agreement dated 20.10.2023.

15.Further, as rightly pointed out by the learned counsel for the applicant, the approval which has been granted vide Email dated 15.07.2024 can only pertain to clause 4.1.2(b) which is the preliminary floor plans and not clause 4.1.2(d) which alone pertains to the signages. Therefore, the respondent is trying to extend the approval granted to the floor plans to the signage put up by the respondent. In fact, when the agreement clearly contains for a specific clause 11.6 pertaining to signage and requiring the respondent to obtain written approval from the applicant even prior to installing the signage and the right conferred also being only in respect of one signage of suitable size, confirming to all Government clauses, regulations etc., the mere fact that the one of the employees of the applicant, Mr.Ramkumar, who is only an Assistant Manager of a particular division, namely Planning and Business Development, cannot grant to approval as required under the agreement. In fact, the said Assistant Manager had no authority to grant approval in respect of the signage as contemplated under clause 11.6 since it is only the Chief Manager who is competent to issue necessary approval on behalf of the applicant and not the said Mr.Ramkumar, Assistant Manager. Therefore, the reliance placed on by the learned counsel for the respondent in Whatsapp messages is of no avail.

16.Further, respecting the very same terms and conditions, the respondent has already complied with the violations observed at other Metro stations. Even in respect of Alandur Metro station, the respondent has not denied the alleged violation but has only chosen to justify the same. In this connection, the advertisement in the form of "Hello Doctor" service is also being cited as a violation, contrary to the agreed terms and conditions. However, it is the contention of the respondent that it is not an advertisement, but put up only for helping the public and for meeting emergency accident cases, the said phone number has been displayed. In this regard, the agreement at Annexure – II, advertisements in any format are banned at Metro stations. Clause 8.4(n) has been agreed upon as material breach of license agreement.

17.As rightly contended by the learned counsel for the applicant, even though the "Hello Doctor" service advertisement has been put up only to help victims who may meet with accidents and may require immediate emergency care and assistance, the phone number given in the said "Hello Doctor" service is only the Toll Free number of the respondent hospital which claim of the applicant is not denied by the respondent and therefore, in my considered opinion, it would clearly amount to an advertisement which is banned under Annexure – II of the agreement dated 20.10.2023. Merely because the Assistant Manager, Planning and Business Development had appreciated the work of the respondent at Alandur Metro Station, it would not amount to estoppel forbearing the applicant from raising an issue of the signage not complying with the agreed terms and conditions or that the advertisement is in violation of the said agreement.

18.When it is not shown by satisfactory documentary evidence that the respondent has obtained the prior written approval as contemplated under clause 11.6 and the approval granted was only in respect of 4.1.2(b), the respondent has not made out a *prima facie* case for grant of an interim injunction. In fact, by complying with similar observations and violations at other Metro stations, the respondent has only shown that even insofar as Alandur Metro Station, the respondent is bound to comply with the terms and conditions of the agreement dated 20.10.2023. Therefore, the balance of convenience is also only in favour of the applicant and not the respondent.

19.Even in respect of irreparable loss and hardships, it is not the case of the applicant that the respondent cannot put up any signage at all. The only grievance of the applicant is that the signage is too big and the advertisement in the form of “Hello Doctor” service has to be removed. The applicant certainly has no objection for the signage being put up in terms of the agreement and after obtaining prior written approval of the applicant. Therefore, it is always open to the respondent to seek approval of a revised signage complying with the terms and conditions of the agreement dated

20.10.2023 which would find favour with the applicant/CMRL.

20.In view of the above, I do not find a case made out for grant of an interim injunction as prayed for by the applicant. Also, as rightly pointed out by the learned counsel for the respondent, in all fairness, the respondent ought to have filed the entire correspondence between the parties instead of filing only the last Email dated 24.09.2024, threatening of action, if corrective measures are not taken within 48 hours. The applicant approaching the Court, is bound to disclose all material facts and should not suppress documents which might have a bearing on the grant or refusal of an interim order.

21.In my considered opinion, the respondent has approached this Court with unclean hands by not producing the various Emails right from 02.09.2024 onwards, the appellant clearly objecting to the signage as well as the advertisement at Alandur Metro Station. Even on this ground, the respondent is not entitled to the equitable relief of an interim injunction.

22.In view of the foregoing, the interim injunction dated 12.12.2024 in O.A.No.953 of 2024 is liable to be vacated. However, considering the fact that the signage has already been put up, it is open to the respondent to submit a revised proposal of the signage to the applicant, within a week from the date of receipt of a copy of this order and the applicant shall consider and approve the same, subject to the proposal complying with the terms and conditions of the agreement dated 20.10.2023 and such approval shall be granted within a period of two weeks from the date of the revised proposal submitted by the respondent and till such time, the existing signage shall not be disturbed by the applicant. However, the advertisement in the form of "Hello Doctor" service is liable to be removed forthwith. It is made clear that this concession shown to the respondent is only in respect of the signage and not in respect of the "Hello Doctor" service advertisement.

23.In fine, Arb.Appln.No.910 of 2024 is allowed with the above directions.

24-01-2025

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P.B.BALAJI,J.

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Arb.Appln.No.910 of 2024
& O.A.No.953 of 2024

24.01.2025