

## **IN THE HIGH COURT OF SINDH AT KARACHI**

### **Suit No. 124 / 2019**

**Plaintiff:** M/s Jampur Limited BVI through Mr. Shah Khawar along with Mr. Umair Bachani Advocates.

**Defendant:** Gwadar International Terminals Limited through Mr. Behzad Haider Advocate.

### **Suit No. 123 / 2019**

**Plaintiff:** M/s Jampur Limited BVI through Mr. Shah Khawar along with Mr. Umair Bachani Advocates.

**Defendant:** Al-Qasim Gas (Pvt.) Limited through Ms. Sara Seerat Advocate.

### **Suit No. 125 / 2019**

**Plaintiff:** M/s Jampur Limited BVI through Mr. Shah Khawar along with Mr. Umair Bachani Advocates.

**Defendant:** Max-Rite Global Technologies (Pvt.) Limited through Mr. Abdul Qayyum Abbasi Advocate.

### **Suit No. 124 / 2019**

- 1) For hearing of CMA No. 18132/2018.
- 2) For orders as to maintainability of CMA No. 956/2019, 960/2019 and 961/2019 vide Hon'ble Court order dated 25.01.2019.

### **Suit No. 123 / 2019**

- 1) For orders as to maintainability of CMA No. 956/2019 and 958/2019 vide Hon'ble Court order dated 25.01.2019.
- 2) For hearing of CMA No. 18130/2018.
- 3) For hearing of CMA No. 966/2019.

### **Suit No. 125 / 2019**

- 1) For hearing of CMA No. 18134/2018.

**Date of hearing:** 20.02.2019, 06.03.2019, 10.04.2019,  
& 25.05.2019

**Date of order:** 19.08.2019

## **ORDER**

**Muhammad Junaid Ghaffar, J.** All these three Suits have been filed by the Plaintiff against three separate Defendants under Section 20 of the Arbitration Act, 1940, (“Act”) whereas, in each Suit the Plaintiff has also filed separate applications under Section 41 of the Act seeking restraining orders in respect of the termination notice issued by Defendant in Suit No. 124/2019.

2. For ease of reference the Defendant in the main Suit No. 124/2019 would be referred to as “Gwadar International Terminal Limited” (“GITL”), whereas, Defendant in Suit No. 123/2019 would be referred to as “Al-Qasim” and Defendant in Suit No. 125/2019 would be referred to as “Max-Rite”. The Precise facts as stated are that Plaintiff entered into an Agreement with GITL on 01.07.2017 in respect of construction of a state of the art Liquefied Petroleum Gas (LPG) Terminal at Gwadar Port, Berth No. 3 and thereafter, leasing out of the said area to the Plaintiff. The Agreement required that construction and installation work was to be completed by 30.09.2017 and the operations were to commence with the arrival of Vessel at Port before 10.10.2017; however, there was some delay; hence, GITL has terminated the Agreement in question with two separate Notices dated 09.08.2018 and 02.11.2018, against which Suit No.124/2019 has been filed under s.20 of the Act, whereas, similar Suits have been filed independently against the other two Defendants as above again under Section 20 of the Act along with the listed applications.

3. Learned Counsel for the Plaintiff has contended that the Agreement in question dated 01.07.2017 is an admitted document and as per the Agreement the area was allotted to the Plaintiff for construction and was valid for four years, requiring completion of the construction on or before 30.09.2017 and starting of operations from 10.10.2017, whereas, during this period of four years, the possession

was supposed to be retained by the Plaintiff. Per learned Counsel as per Clause 21 of the Agreement the requisite Performance Guarantee was furnished by the Plaintiff, whereas, in view of the fact that the Plaintiff is an international company having no permanent establishment in Pakistan; it entered into a 50:50 Joint Venture Agreement dated 26.9.2017 with Al-Qasim to construct and operate the terminal. According to him pursuant to the Joint Venture Agreement Al-Qasim entered into another Agreement dated 10.8.2017 with Max-Rite as a contractor to construct the LPG terminal. Per learned Counsel as a matter of fact now it has transpired that Al-Qasim and Max-Rite are both owned by one Mr. Saifullah, which fact was never disclosed to the Plaintiff, whereas, pursuant to the Agreement with Al-Qasim, the Plaintiff has till date paid an amount of US\$ 330,081.60 to Max-Rite for carrying out the construction works, whereas, despite Agreement, Al-Qasim has failed to invest or share any amount pursuant to such Agreement. According to him there was some delay in completion of the project, but this was due to several changes in the design and Dead Weight Tonnage of the Vessel to be brought to Gwadar Port, and all such acts were on the part of the GITL; hence, the delay, if any, could never be attributed towards the Plaintiff. Per learned Counsel, Al-Qasim and Max-Rite made several correspondence with GITL and excluded the Plaintiff from the construction work being carried out, and notwithstanding all these issues, it is the case of the Plaintiff that the terminal was completed and constructed on 11.02.2018; and only required certain approvals from the Government, and taking undue advantage of this GITL issued its first notice of termination on 09.08.2018 which was duly replied; but with malafide and ulterior motives, it entered into a separate Agreement with Al-Qasim on 25.10.2018, whereas, the final notice of termination was issued subsequently on 02.11.2018; hence, the Plaintiff is entitled for the relief claimed. According to him, there was collusion and connivance between Al-Qasim, Max-Rite and GITL, whereas, the Plaintiff has been deprived of its huge investment and expenditure, which is expressly clear from the fact that they entered into an Agreement with Al-Qasim on 25.10.2018, whereas, issued the final termination notice subsequently on 02.11.2018. According to him, the Plaintiff is in possession of the berth, whereas, the construction is now complete; hence, this Court has been approached with a Section 20 application under the Act read with

Section 41 *ibid* seeking an injunctive order pending Arbitration in the matter. In these circumstances, he has prayed for grant of these applications failing which it would cause the Plaintiff irreparable loss, whereas, according to him a *prima facie* case has been made out. In support he has relied upon the cases reported as ***Arabtec Pakistan (Pvt.) Ltd. V. Enshaanlc Developments (Pvt.) Ltd. (2011 C L C 323), M/s Hatta Construction Company (Pvt.) Ltd. V. Faisalabad Development Authority, Faisalabad and another (1995 C L C 1877)*** and ***Standard Construction Company (Pvt.) Ltd. V. Pakistan and others (2010 S C M R 524)***.

4. On the other hand Learned Counsel for GITL in Suit No. 124/2019 has contended that the project in question is part of China Pakistan Economic Corridor (“CPEC”) and is one of the most important projects. Per learned Counsel, GITL is a State Owned Company of China, whereas, the Gwadar Port and its operations are a major contributors to the smooth operations of all CPEC projects. Per learned Counsel, the present Suits as filed by the Plaintiff are not maintainable inasmuch as no proper authorization on behalf of the Plaintiff Company has been placed on record, whereas, the Power of Attorney is ambiguous and silent as to the specific authority conferred upon the person who has filed this Suit, hence, the Suit itself is incompetent. Per learned Counsel, the Plaintiff entered into an Agreement with GITL which required the Plaintiff to construct the LPG terminal; however, it is the case of GITL that the Agreements entered into between Plaintiff and Al-Qasim / Max-Rite were without any consent and or approval of GITL; hence, these contracts are admittedly in violation of the Agreement in question. Learned Counsel has referred to Clause 24 of the Agreement in question which according to him prohibits transferring or assigning the benefit of this Agreement to any person in any manner. Learned Counsel has also referred to the Agreement between Plaintiff and Al-Qasim dated 26.09.2017 and has contended that the said Agreement requires a formal intimation to GITL about formation of the alleged Joint Venture; however, no such intimation was ever sent to GITL. Learned Counsel has then referred to an email dated 10.01.2018 sent to GITL by the Plaintiff, whereby, the Plaintiff for the first time disclosed that Al-Qasim is a local partner of the Plaintiff and is the owner of Max-Rite as well. Learned Counsel has then referred to Clause 7 of the

Agreement and has contended that the Vessel was to be brought to the berth by a certain date; but again this clause has also been breached and the Plaintiff has continuously failed to honour various parts of the Agreement; hence, is not entitled for any indulgence. Learned Counsel has then referred to Clause 36 of the Agreement and has contended that upon such breach of any of the terms of the Agreement, if the dishonoring party fails to cure the breach within 20 days of receipt of the notice, then the non-breaching party i.e. GITL was empowered to terminate the Agreement. According to him on 09.08.2018 the first notice was issued and admittedly the Plaintiff failed to cure the breach on its part; hence, the Agreement stood terminated immediately after 20 days, whereas, the second termination notice dated 2.11.2018 was just a formality. Learned Counsel has then referred to various correspondence in between the first and second notice of termination, and has argued that the Plaintiff was being continuously reminded to remedy the breach on its part; but the Plaintiff failed to come up with any justifiable response and thereafter, due to the nature and importance of the project; Agreement was entered into with Al-Qasim on 25.10.2018; hence no case is made out. According to him, when this Suit was filed, the possession was already taken over by GITL, whereas, the Agreement stood cancelled much prior in time and a third party interest was already created and by concealing all these facts an ad-interim order was obtained on 18.12.2018, despite the fact that the construction is already completed with requisite NOCs already issued by the respective Governmental authorities in favour of Al-Qasim including NOC of the Environmental Protection Agency as well as Oil and Gas Regulatory Authority (“OGRA”). He lastly submits that notwithstanding all these submissions the Plaintiff had though entered into a contract for construction as well as operations of a LPG terminal; but till date the Plaintiff is not in possession of any license for such operations, hence, has no locus standi to seek any injunctive order as the grant of the same would seriously prejudice GITL. In support of his contentions he has relied upon the case reported as ***Atco Lab. (Pvt.) Limited V. Pfizer Limited and others (2002 C L D 120) and Messrs Synergy Advertisement (Pvt.) Limited V. All Pakistan Newspaper Society and 3 others (2012 C L C 721)***.

5. Learned Counsel appearing on behalf of Al-Qasim, the Defendant in Suit No. 123/2019 has also raised an objection regarding non-production of a Board Resolution of the Plaintiff for filing instant Suit which according to her is an incurable defect; hence, the Suit is not competent. In support of this proposition she has relied upon the cases reported as ***Khan Iftikhar Hussain Khan of Mamdot (Represented by 6 heirs) V. Messrs Ghulam Nabi Corporation Ltd., Lahore (P L D 1971 SC 550), Hassan Ali & Co. Cotton (Pvt.) Ltd. V. Trading Corporation of Pakistan (Pvt.) Ltd and another (2017 C L C 169), Aki Habara Electric Corporation (Pte.) Limited V. Hyper Magnetic Industries (Pvt.) Limited (P L D 2003 Karachi 420), Board of Intermediate and Secondary Education, Multan V. Fine Star & Company, Engineers and Contractors (1993 S C M R 530), Messrs Ayaz Builders V. Board of Trustees of the Karachi Port Trust and another (2008 C L C 726) and Federation of Pakistan V. Messrs James Construction Company (Pvt.) Ltd. (P L D 2018 Islamabad 1).*** On merits she has contended that all along the Plaintiff has failed to perform the Agreement within time, whereas, no prima facie case has been made out. She has also argued that the Plaintiff was not given any right in respect of the land in question which falls within the restricted area, and therefore, the reliefs being asked for are barred under Section 21 (d) and Section 56(f) of the Specific Relief Act, 1877. To support her contention she has relied upon the cases reported as ***Daewoo Pakistan Motorway Services Limited through Chief Executive V. Sun Shine Service (Regd) and another (2009 C L C 406) and Messrs Federal Handicraft V. Civil Aviation Authority and 2 others (2018 C L C Note 9).*** She has further argued that damages being claimed are the appropriate compensation, and no irreparable loss is being caused to the Plaintiff if the any injunction is not granted. Per learned Counsel, a new Agreement has already been entered into between GITL and Al-Qasim much before filing of this Suit, and third party interest already stands created, which fact was always in the knowledge of the Plaintiff as disclosed in Para 27(f) of the Plaint; therefore, no case is made out. She has further argued that all requisite approvals and NOCs including NOC of the Environmental Protection Agency and OGRA have been issued in favour of Al-Qasim, whereas, after completion of the construction it has been handed over to GITL; hence, for the present purposes no case for any injunctive relief is made out. She has also

referred to various breaches on the part of the Plaintiff in respect of the Agreement with GITL, including failure in bringing the Vessel to Gwadar Port and has contended that the termination by GITL was justified in the facts and circumstances of this case. She has therefore, prayed for dismissal of the listed applications.

6. Learned Counsel for Max-Rite in Suit No. 125/2019 has contended that Max-Rite was appointed as a contractor on the basis of an oral Agreement for construction and maintenance of the terminal; however, no final written Agreement was ever signed by Max-Rite. Learned Counsel has also raised an objection regarding maintainability of the Suit and has adopted the arguments in this regard raised by other learned Counsel. He has further argued that Mr. Muhammad Akmal the ex-employee of Max-Rite has filed instant Suit on behalf of the Plaintiff which shows the malafides of the Plaintiff. According to him, the Agreement between Plaintiff and GITL stands terminated, whereas, the construction is now complete and therefore, no case for indulgence is made out. Per learned Counsel, in these circumstances, no prejudice would be caused to the Plaintiff if the injunctive relief is denied. In support of his contention he has relied upon the cases reported as ***Muhammad Rasab and another V. Muhammad Siddiquie Chaudhry (1998 M L D 2045)***, ***Mian Nur Hussain and others V. Khalifa Muhammad Sultan and others (P L D 1956 (W.P.) Lahore 893)***, ***Mrs. Shazadi Baber V. Hina Housing Project (Pvt.) Ltd. and others (1994 C L C 1601)***, ***Puri Terminal Ltd. V. Government of Pakistan and 2 others (2004 S C M R 1092)***, ***Abdul Ghafoor Memon V. Mohammed and another (P L D 1975 Karachi 464)***, ***Atco Lab. (Pvt.) Limited V. Pfizer Limited and others (2002 C L D 120)***, ***Mst. Najma Rana V. S. M. Maroof and another (1989 M L D 1337)***, ***Sh. Muhammad Saleem V. Saadat Enterprises (2009 C L C 291)***, ***Aki Habara Electric Corporation (Pte.) Limited V. Hyper magnetic Industries (Pvt.) Limited (P L D 2003 Karachi 420)***, ***Hassan Ali & Co. Cotton (Pvt.) Ltd. V. Trading Corporation of Pakistan (Pvt.) Ltd and another (2017 C L C 169)***, ***Khan Iftikhar Hussain Khan of Mamdot (Represented by 6 heirs) V. Messrs Ghulam Nabi Corporation Ltd., Lahore (P L D 1971 SC 550)***, ***Sh. Muhammad Saleem V. Saadat Enterprises (2009 C L C 291)***, ***Board of Intermediate and Secondary Education, Multan V. Fine Star &***

***Company, Engineers and Contractors (1993 S C M R 530), Federation of Pakistan V. Messrs James Construction Company (Pvt.) Ltd. (P L D 2018 Islamabad 1), Mst. Najma Rana V. S. M. Maroof and another (1989 M L D 1337), Messrs Synergy Advertisement (Pvt.) Limited V. All Pakistan Newspaper Society and 3 others (2012 C L C 721), Atco Lab. (Pvt.) Limited V. Pfizer Limited and others (2002 C L D 120), Muhammad Eloram Khan and another V. Mirza Muhammad Bakar and others (A. I. R. 1935 Allahabad 106), Park View Enclave (Pvt.) Ltd. V. Capital Development Authority and 2 others (2018 C L C 947), Umar Farooq and 3 others V. Province of Sindh and 5 others (1998 C L C 760), Khursheed Ahmed Butt V. Captain Feroze Aftab and 3 others (2011 C L C 664), Mehran Sugar Mills Limited V. Sindh Sugar Corporation Limited and 2 others (1995 C L C 707), Maqbool Ahmed and 4 others V. Syed Farzand Ali Shah and 15 others (1990 C L C 1756), Marghub Siddiqi V. Hamid Ahmad Khan and 2 others (1974 S C M R 519), Feroz Ali Gaba V. Fishermen's Cooperative Society Limited and 2 others (2015 C L C 493), Mst. Sakina Khatoon and 6 others V. S. S. Nazir Ahsan and 17 others (2010 C L D 963), Messrs national Construction Ltd. V. Ajwan-i-Iqbal, Authority, Lahore (P L D 1992 Lahore 86), Messrs maxim Advertising Company (Pvt.) Ltd. V. Province of Sindh and 4 others (2007 M L D 2019), Mst. Roshan Bano and 5 others V. Pakistan Defence Officers Housing Authority and 7 others (P L D 2016 Sindh 445).***

7. Mr. Umair Bachani also appearing on behalf of the Plaintiff while exercising his right of rebuttal has contended that insofar as the objection regarding maintainability of this Suit is concerned, the same is misconceived inasmuch as the Plaintiff is a company registered in British Virgin Islands and is a one man company in the name of Mr. Muhammad Shafiq who has given the special power of attorney in favour of its authorized representative Mr. Muhammad Akmal; hence, the objection regarding non-production of a Board Resolution and the competency of the Suit is misconceived. Insofar as delay in completion of the project is concerned, learned Counsel has referred to various correspondence placed on record and has submitted that there were several changes requested by GITL in respect of layout plan, pipe lining

issue, change in the Dead Weight Tonnage of the Vessel; hence, the Plaintiff is not at fault and in support he has referred to Section 55 of the Contract Act, 1872, and has further argued that time was never the essence of the Contract, whereas, the delay was as per mutual negotiations. Insofar as the Agreement between GITL and Al-Qasim is concerned, he has argued that the same was entered into for frustrating the Agreement with Plaintiff, whereas, it was even done before issuance of a final termination notice, and therefore, the said Agreement is a nullity in the eyes of law. Per learned Counsel, the project was already completed on 11.02.2018 by the Plaintiff and it was pending for issuance of requisite permission from the Government department for which GITL never co-operated and therefore, the alleged completion of the project by Al-Qasim is not true. Learned Counsel has then referred to the entry passes issued to the Plaintiff as well as its employees on 22.10.2018 and being valid up to 30.01.2019 and has contended that if the Agreement was being terminated, then how such entry passes of a restricted area were issued. According to him a fraud has been committed by all these Defendants and therefore, the Plaintiff is entitled for the relief being asked for.

8. I have heard all the learned Counsel and perused the record with their able assistance. First I would like to deal with the objection regarding maintainability of these Suits as raised by respective learned Counsel appearing on behalf of the Defendants, and after going through the record so placed on record on behalf of the Plaintiff, I am not inclined to sustain such objection, inasmuch as the Plaintiff is a one man company registered in the British Virgin Islands in the name of one Mr. Muhammad Shafiq who is also the owner of the company as well, and has executed a Special Power of Attorney in favour of the authorized person Mr. Muhammad Akmal who has filed all these three Suits. In such a situation, the objection for producing a Board Resolution on behalf of the Company appears to be misconceived as this is a single man company, and does not require any further deliberations as well as the relevance of the case law so relied upon; therefore, this objection is hereby repelled.

9. Now coming to the merits of the case, it may be noted that all these three Suits have been filed by the Plaintiff against the three

Defendants as noted hereinabove under Section 20 of the Act, and along with these Suits, the Plaintiff has also filed application(s) under Section 41 of the said Act seeking an injunctive order pending final adjudication of these Suits. The precise case of the Plaintiff is to the effect that it is a Company operating from Dubai, having its offices as well as business worldwide, and has expertise in the field of shipping, LNG tankers, tugboats, freight ships etc. It is their further case that GITL showed interest and entered into some negotiations with them for construction of LPG Terminal at Gwadar Port, according to the international safety and quality standard for import, storage, discharge and dispatch of LPG into Pakistan with a capacity to handle 1200 tons per day, whereas, the Plaintiff's claims specialization in bulk petroleum handling and management of LPG tankers and therefore, on 01.07.2017 an Agreement was entered into with GITL for construction and operation of the LPG terminal at Berth No. 3 of Gwadar Port. It is further case of the Plaintiff that since they do not have any operations and office in Pakistan, they entered into a Joint Venture Agreement with Al-Qasim through an Agreement dated 26.09.2017 and so also another Agreement with Max-Rite on 10.08.2017 by appointing them as a contractor. According to the Plaintiff, the construction is almost complete and the entire amount has been invested by the Plaintiff, and Al-Qasim has till date not shared the 50% of its share, whereas, due to several reasons beyond control, including delay on the part of GITL, the project could not be completed as per agreed terms; however, all along the extension in time was by consent. It is further case of the Plaintiff that Al-Qasim and Max-Rite failed to perform their Agreements fully and instead, to the exclusion of the plaintiff entered into direct communication with GITL and this resulted into the first notice of termination dated 09.08.2018. It is the case of the Plaintiff that the Agreement with GITL provides for Arbitration as per Clause 34 and therefore, these Suits have been filed for referring the matter for Arbitration and pending such Arbitration, injunctive order be passed by suspending the termination notice as well as restraining Al-Qasim from taking over the Site in question. On the contrary, the case of GITL is that plaintiff caused delay in completion of the project, firstly; by violating clause 7 of the Agreement whereby the plaintiff was required to bring a Vessel / Gas Carrier "SKAROV" for gas storage facility and secondly; on the ground that construction work was supposed to be

completed by 30.9.2017 and operation was to start from 1.10.2017, which admittedly has not been done. According to GITL's case Agreement was terminated and at the same time Al-Qasim was awarded the contract to complete the project which now has been done and therefore, no injunction at the present moment can be granted.

10. Insofar as the present Suits are concerned, it may be of relevance to observe that these Suits are not seeking any declaration from this Court, either under the Specific Relief Act or any other law as may be applicable. Similarly, the listed applications have also not been filed under Order 39 Rule 1 & 2 CPC. The present Suits are under Section 20 of the Act which provides that where any person has entered into an Arbitration Agreement and where a difference has arisen in respect of the matter to which the Agreement applies, they or anyone of them may apply to a Court having jurisdiction in the matter, to which the Agreement relates, that the Agreement be filed in Court and on such application being made, after issuing notice to all parties to the Agreement, the Court shall order the Agreement to be filed and shall make an order of reference to the Arbitrator appointed by the parties or where the parties cannot agree upon such appointment to itself appoint an Arbitrator and thereafter, the Arbitration shall proceed in accordance with and shall be governed by the provisions of the Act. The Plaintiff along with this Suit has also filed application(s) under Section 41 *ibid* which provides the procedure and powers of the Court under the Act and states that the provisions of Civil Procedure Code shall apply to all proceedings before such Court, whereas, the Court shall have, in respect of such matters, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purposes of and in relation to, any proceedings before the Court, provided that nothing in Clause (b) shall be taken to prejudice any power which may be vested in an Arbitrator or Umpire for making orders with respect to any of such matters. Resultantly, while dealing with such an application for an injunctive order, the Court while exercising powers under Section 41 of the Act should not pass any injunctive order without examining the three ingredients for grant of an injunction i.e. a *prima facie* case, balance of convenience and causing of irreparable loss. These three pre-requisites for grant of or refusal of an injunction are to be followed and always adhered to in such cases. This

is settled law and reliance in this regard may be placed on the case reported as ***Pakistan Railways through AGM (Traffic) Lahore, V. Messrs four brothers International (Pvt.) Ltd. and others (P L D 2016 SC 199)***. While examining the facts of the present case it appears to be an admitted position that the Plaintiff was issued first notice of termination on 09.08.2018 which as per Clause 36 of the Agreement required the Plaintiff to cure the alleged breach on its part. It appears that as per GITL's case the Plaintiff failed to cure such defects; consequently the Agreement stood terminated immediately, and thereafter, they entered into another Agreement with Al-Qasim on 25.10.2018; whereas, but the Plaintiff without any justifiable cause, never came before this Court for seeking any restraining orders against GITL against the 1<sup>st</sup> notice of termination and from finally terminating the Agreement. It further appears that thereafter even a second notice was issued for termination on 02.11.2018. In fact the Plaintiff ought to have come to the Court immediately when the first notice of termination dated 09.08.2018 was issued to it, as at that point of time, it was only a notice of termination and after passing of 20 days period, apparently the Agreement stood cancelled with a simple notice immediately thereafter, and GITL was not required to wait till 02.11.2018; but nonetheless, admittedly the Plaintiff failed to come within time before this Court and during such period not only the Agreement stood cancelled; but so also third party interest was created on 25.10.2018 through an Agreement with Al-Qasim. For the present purposes while hearing applications under s.41 of the Act, whether GITL, or for that matter, Al-Qasim and Max-Rite have acted within the parameters of the Agreement and in accordance with law or not, this Court must not comment on its merits and give a conclusive finding. The Agreement in question provides for Arbitration between the parties and such question of default by and or any party is to be decided by the learned Arbitrator. For the present purposes, this Court is only concerned that whether the Plaintiff has made out a case for grant of a mandatory injunction as presently they are not only out of possession; but the Agreement in question also stands terminated, and the Site has been handed over to someone else. The Plaintiff for the present purposes wants this Court to pass an order which would bring the state of things to a position which was not there when this Suit was filed. There is considerable delay on the part of the Plaintiff in approaching this Court starting from

09.08.2018 till 18.12.2018 when these Suits were filed. In these circumstances, without any further deliberation, I am of the view that the Plaintiff has failed to make out a case for grant of any injunctive order as passing of any such order would amount to status quo ante, and therefore, the same must not be granted. Further deliberation on the arguments so raised by all respective Counsel may prejudice the case of any of the parties if the matter is finally referred to Arbitration; hence, I am not inclined to pass any such orders.

11. It is settled law that when compensation is an adequate remedy, no injunction should be granted. The peculiar facts of this case are fully covered under this settled proposition of law; as firstly, the Plaintiff is seeking a mandatory injunction which ordinarily in such situations is not to be granted; and secondly, upon being served with termination notice, instead of approaching this Court immediately and within the period of 20 days in which the defects and or breaches could have been corrected or remedied; the plaintiff chose not to contest the same. In exercising discretion in respect of grant or otherwise of a mandatory injunction, consideration of comparative advantage and disadvantage has to be given due weightage by the Court. It is settled law that if injury on account of denial is reparable by way of compensation / damages, whereas, grant inflicts serious consequences on the defendant, then the Court is always reluctant to grant any such injunction. Normally the Courts do not order doing a positive act which will change an existing state of things. Such an injunction can be granted to restore status quo only and not to establish a new state of things. It should not be granted or allowed where it would amount to granting a decree without trial. The power of Court in these situations is to be exercised with care and circumspection and only in cases where grant of compensation and damages is no proper remedy. A mandatory injunction can therefore be issued in order to compel the performance of certain acts in order to prevent the breach of an obligation which the Court is capable of enforcing. It is true that the obligation may flow from a contract; but then, an agreement enforceable at law has to be examined and on the basis of which the obligation can be ascertained. In the, instant case, the Court has to see that whether, is there any obligation on the part of the Defendant to perform any such mandatory act. The Courts power to grant a mandatory injunction is discretionary,

and for that it is a must that the plaintiff approaches the Court immediately and at the very first instance. This again is not the case in hand, as the Plaintiff, admittedly on its own volition failed to seek any restraining order within the period of 20 days from the date of 1<sup>st</sup> notice of termination. Once the contract has been terminated, the Plaintiff has approached this Court for a mandatory injunction. The Court in such like cases has to see and weigh the amount of substantial mischief done or threatened to the Plaintiff, and compare it with that to the Defendant in the event of grant of such an injunction. Lastly, it must also be kept in mind that Court must not grant such an injunction unless the Court is capable of enforcing it. In this case the Plaintiffs seek a mandatory injunction by permitting and allowing them to continue as being in possession and having management control over the area in question, which otherwise is a restricted area and beyond the territorial jurisdiction of this Court. This type of an injunction cannot be enforced by the Court; hence, the Court must not grant the same.

12. In the case reported as **S. Sundaram Pillai and Ors. vs. P. Govindaswami and Ors** (AIR 1985 Madras 199), it has been observed as under;

16. The object of an injunction is prevention (sic) and the maintenance of the status quo ante. Normally this object is achieved by merely making a restrictive order which forbids the carrying out of a threat of injury, or the repetition of an injurious act. In a given case, however, the acts committed by the defendant may leave an abiding injury and it may be difficult to restore the status quo ante unless that which has been done is undone. A mandatory injunction is issued to undo the effect of an injurious act. A very familiar example of such an injury is where the defendant erected a building which causes a perpetual obstruction to the access of light to the plaintiff's house, to which amount of light he has a legal right. In such a case, it is obvious that restoration of the parties to their former condition is impossible except by ordering the demolition of the building. Sometimes in order to prevent the breach of the legal right a fid to compel the performance, of certain acts the defendant is ordered to undo that which he has done. A mandatory injunction is granted only in rare cases and normally a mandatory injunction is granted, if at all, only to restore the status quo and not to establish a new state of things differing from the state which existed at the date when the suit was instituted. The effect of a mandatory injunction so far as the defendant is concerned is more serious than in the case of a prohibitory injunction, because, where by a mandatory injunction the defendant is enjoined to do any particular act, he may be put to expenses and trouble which may be very considerable. That is why, though the power to grant injunction has to be exercised with great caution, much greater caution is necessary in the case of making an order of mandatory injunction which is very rarely granted.

13. In view of herein above facts and circumstances of this case I am of the view that insofar as the injunctive relief is concerned, the Plaintiff has failed to make out a case of any indulgence as neither it has a prima facie case, nor balance of convenience lies in its favour, whereas, no irreparable loss is going to be caused if such a relief is withheld at the present moment, as apparently, the Plaintiff has by itself come to the Court belatedly and after considerable delay for an injunctive relief which course adopted by it in fact disentitle it from claiming any such relief. Accordingly applications bearing CMA No.18132/2018 (**Suit No.124/2019**), 18130/2018 (**Suit No.123/2019**) and 18134/2018 (**Suit No.125/2019**) are hereby dismissed. All other applications are adjourned to a date in office.

Dated: 19.08.2019

**J U D G E**

ARSHAD/