

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2017

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. Nos.629 and 630 of 2017
and A.Nos.4546 and 4547 of 2017

M/s.Oasys Cybernetics Pvt. Ltd.,
formerly known as
M/s.Omne Agate Systems Private Limited
II Floor, Murugesu Naicker Complex,
No.99, Greaves Road,
Chennai - 600 006
rep. by its Managing Director
Mr.K.R.Ilangovan

.. Petitioner in both O.Ps

-VS-

1. Southern Railway
rep. by its Senior Divisional
Commercial Manager,
Commercial Department,
Chennai Division, Southern Railways,
Chennai - 600 001.

2. M.Nandan,
Retd. District Judge,
No.171, MIG, 4th Main Road,
TNHB, Nalambur West Garden,
Chennai - 600 037.

.. Respondents in both O.Ps

Prayer: Petitions filed under Section 11 read with 14 of the Arbitration & Conciliation Act, 1996 to terminate the mandate of the second respondent and appoint any other person to continue with the proceedings in respect of the dispute pending in further of the order made in O.P.Nos.449 and 450 of 2013 and adjudicate the dispute between the parties.

COMMON ORDER

These petitions are filed in terms of Section 11 read with Section 14 of the Arbitration and Conciliation Act, 1996 (in short, 'Act') praying for the termination of the mandate of the second respondent and appointment of an alternate person to continue the proceedings for arbitration inter se the parties.

2. The petitioner has made various allegations about the conduct of the Arbitrator in the proceedings for arbitration, particularly the occurrence at the hearing of the matter on 21.07.2017. Briefly stated, it is the contention of the learned counsel that the first respondent Railways were required to file a proof affidavit in chief on or before 14.7.2017. The matter was listed for cross examination on 21.07.2017. The proof affidavit was however filed only on 17.1.2014, received by the petitioner under protest. A short adjournment was sought for by the petitioner. However, the learned Arbitrator declined to grant the same and directed the cross examination to be completed on the same day. At the insistence of the party, the matter was adjourned, but only upon imposition of costs of Rs.20,000/-. It is against the aforesaid order that the present petition is filed seeking termination of the mandate of the Arbitrator.

3. Learned counsel appearing for the petitioner alleges that unsavory remarks had been made by the Arbitrator, which would demonstrate prejudice and bias against it.

4. Mr.P.T.Ramkumar, learned counsel appearing for the first respondent Railways would only point out that there have been 16 sittings in the matter and as such, substantial ground had been covered in the proceedings.

5. Vide order dated 24.10.2017, the records of the Arbitrator as well as a report were called for. In the report at paragraph 9, the Arbitrator would flatly deny the incident as stated by the petitioner and make counter allegations.

6. The fact that an incident has occurred is not in dispute. The levy of cost is also not in dispute. The process of arbitration is expected to aid the process of a quick and, as far as possible, smooth settlement between the parties. This is not likely in the face of the acrimony expressed by the petitioner.

7. I am not inclined to go into the details of the allegations levelled on either side primarily for the reason that once a party has expressed lack of faith in the Arbitrator, it is in the interests of all to have the matter referred to an impartial Arbitrator in whom both parties can repose faith. The Arbitrator in this matter, arrayed as second respondent, is a learned District Judge and as such, has offered a clear denial of the allegations levelled against him.

Dr.ANITA SUMANTH,J.

8. Thus, and without expressing any opinion on the merits or demerits of the averments in the petition, I am inclined to order the petition as prayed for. I appoint Mr.G.Palaniappan, District Judge (retired), No.2-b Owner's Court, Montieth Street, Montieth Road, Egmore, Chennai-600008, (Mobile 9443335815) to continue the proceedings from the stage of cross examination. The records shall be transmitted back to the newly appointed Arbitrator. Let the parties appear before the Arbitrator upon issuance of notice by him. The proceedings may be completed as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this order. The Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both the parties equally. The cost of Rs.20,000/- deposited in Court pursuant to the order of the erstwhile Arbitrator shall be withdrawn by the first respondent. The petitioner has not expressed any objection to this direction.

9.The Original Petitions are ordered leaving the parties to bear their own costs. Consequently, connected miscellaneous applications are closed.

04.12.2017

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