

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :15.02.2017

Coram

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

O.P.No.369 of 2013

Mr.Naveen G. Rolands

.. Petitioner

vs.

1.M/s.Cholamandalam DBS Finance Ltd.,
Rep. By its Asst VP Mr.Ravindra Pandurang Nankar,
Having its registered office at “Dare House”,
No.2, N.S.C. Bose Road,
Chennai - 600 001.

2.Mrs.Meera Gnanasekaran,
Sole Arbitrator,
Old No.155, First Floor,
Linghi Chetty Street,
Chennai - 600 001.

3.Mrs.Kavitha, S.R.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned award dated 16/10/2012 passed by the 2nd respondent subsequently declare all the proceedings initiated by the first respondent against the petitioner as void.

For Petitioner : Mr.G.Veerapathiran

For Respondents : Mr.S.Namasivayam for R1 & R2

ORDER

This petition has been filed by Mr. Naveen G.Rolands, who availed loan from the 1st respondent Finance Bank, challenging the award passed by the Arbitrator dated 16.10.2012.

2. By the impugned award, the learned Arbitrator has held that the petitioner and his wife, the 3rd respondent (respondents in the arbitration case) have committed breach of the loan agreement by committing default in payment of instalments and liable to pay the 1st respondent Bank, a sum of Rs.33,97,383/-, as on 30.06.2012, failing which the respondents are bound to recover the possession of the schedule property to the 1st respondent Finance Bank. The learned Arbitrator awarded interest @ 18% per annum as against the contractual rate of interest at 14.5% (floating) and interest claimed @ 48% in the claim application.

3. The petitioner availed a Home Equity Loan of Rs.40 lakhs vide loan agreement dated 09.07.2008. The immovable property at Bangalore was offered as security for the loan transaction. The petitioner and the 3rd respondent herein created a charge on the said property in favour of the 1st respondent by deposit of title deeds. The 3rd respondent herein executed

Deed of Guarantee for due performance of the terms and conditions of the agreement executed by the petitioner herein and undertook to indemnify the 1st respondent Finance Company in case of default committed, in respect of any of the terms and conditions, by the petitioner. It is not in dispute that the petitioner committed default in repayment. This ultimately led to the filing of a claim petition before the 2nd respondent Arbitrator wherein, the 1st respondent Finance Company claimed that they had advanced a sum of Rs. 40 lakhs repayable in 264 monthly instalments and the last payment was made by the petitioner on 12.03.2012, after which, default had occurred and requested award to be passed for a sum of Rs.33,97,383/- as on 30.06.2012 together with interest @ 48% per annum.

4. A communication dated 30.06.2012 was sent to the petitioner by the 1st respondent, which appears to be a response to a request for foreclosure of a loan by the petitioner and he was informed that as per the Loan Agreement, the amount payable by the petitioner, as on the said date, was Rs.33,97,383/- and the said amount was mentioned, assuming that the last instalment had been cleared by the petitioner, taking the date of foreclosure as 30.06.2012. As noted above, this communication dated 30.06.2012 appears to have been made at the request made by the petitioner for foreclosure or early closure of the loan or otherwise, there may not have been a necessity for sending such a

communication, when the EMIs were in progress. The statement of accounts, drawn as on 30.06.2012 for the period from 30.06.2008 to 30.06.2012, was placed before the Arbitrator. The 1st respondent by letter dated 06.07.2012 nominated the 2nd respondent as the Arbitrator and a copy of the communication was marked to the petitioner and the 3rd respondent herein. Thereupon, the learned Arbitrator sent a letter by registered post to the petitioner and the 3rd respondent informing that the 1st respondent has filed a claim statement and the matter stands posted for hearing on 02.08.2012 and directed them to appear in person or through their authorised representative. While so, the petitioner paid a sum of Rs.1,16,000/- at Bangalore, being the amount payable towards 3 instalments, which has been acknowledged by receipt dated 24.07.2012. The Arbitrator sent another notice dated 23.08.2012 stating that the private notice was returned with the postal endorsement "intimation delivered" and directed the petitioner and the 3rd respondent to appear on 06.09.2012 at 4.00p.m., to give a final opportunity, failing which the matter will be decided on merits. The said notice was also returned with the endorsement " intimation delivered". On 29.09.2012, the petitioner paid a sum of Rs.77,254/- at Bangalore, being the amount payable towards 2 EMIs of Rs.38,627/- each. The Arbitrator ultimately passed the impugned award dated 16.12.2012 after setting the petitioner and the 3rd respondent, ex parte.

5. The learned counsel for the petitioner would contend that the Arbitrator at Chennai has no jurisdiction to entertain the dispute as no part of the transaction had occurred within the jurisdiction of this Court or in Chennai and all transactions were at Bangalore. It is further submitted that it is not clear whether the claim is based on a promissory note or loan agreement, as the 1st respondent has relied upon promissory notes obtained from the petitioner, which are all blank formats. As such, the claim itself is not valid. Regarding the Statement of Accounts, it is submitted that even going by the said Statement of Accounts, the total amount due will be only Rs.4 lakhs and the claim statement filed before the learned Arbitrator for a phenomenal amount of Rs.33 lakhs is unsustainable. Further, it is submitted that the award is vitiated on the ground of total non-application of mind, as there are several factors, which show that the Arbitrator has not taken into consideration the facts, which are necessary and entertained the claim petition, well before, she being nominated as an Arbitrator. To demonstrate that, the preamble portion of the award was referred to, which states that the claim statement was filed on 03.07.2012, whereas the 2nd respondent was appointed as an Arbitrator only on 06.07.2012. Thus, according to the learned counsel for the petitioner, the impugned award is against the canons of public policy. Further, it is submitted that though the 2nd respondent states that she has been nominated as an

Arbitrator, by the 1st respondent, it has not been specifically stated on what date, she gave consent. Moreover, the procedure adopted by the Arbitrator is being questioned to show that summon was not taken as the Arbitrator had straight away issued notice to the petitioner and the 3rd respondent for the hearing on 02.08.2012. By referring to the original returned cover, more particularly, the return of their notice dated 02.08.2012, learned counsel submits that it is not clear as to who has made the endorsement “intimation delivered” as the said endorsement is over and above the seal affixed by the Post Office. Therefore, the learned counsel submits that there is lot of suspicion in the manner in which the notices were sent and alleged to have been served.

6. Further, it is submitted that in the communication dated 30.06.2012, there is no demand made on the petitioner and it is only a foreclosure intimation. It is submitted that the petitioner, in the interregnum, had effected two payments and he was not aware of the proceedings before the Arbitrator nor was intimated to the petitioner. Further in the award there is no whisper of bulk payments and the reduction of EMI. Further, the learned counsel pointed out certain discrepancies in the documents, stating that they are blank formats etc. Commenting upon the observations made by the learned Arbitrator, it is submitted that there is no discussion by the

learned Arbitrator as to how the petitioner is due and payable to the amount awarded. Further the Arbitrator exceeded her jurisdiction in directing the surrender of possession of the property, when there is no such prayer made in the claim petition. Further, such a relief could not have been granted as the property was outside the jurisdiction of Tamil Nadu and the Arbitrator could not issue such a direction. Further it is submitted that the contracted rate of interest is at 14.5 % (floating) whereas in the claim statement, the first respondent demanded 48% and the learned Arbitrator without assigning any reasons, has awarded the interest at 18%. Further the Arbitrator states that evidence of P.W.1 was recorded. However, what was the nature of evidence given by P.W.1 has not been stated in the award, which clearly shows non application of mind. Further the Arbitrator has not recorded in the award, as to how and in what manner, the petitioner was set exparte; payments effected by the petitioner pending arbitration was not mentioned and there is also discrepancies in the dates relating to the deposit of title deeds, as the deposit of title deeds has been mentioned as 09.07.2008 in the agreement, whereas, in the sanctioned letter it was mentioned as 31.07.2008 and in the disbursement letter, it was mentioned as 10.07.2008 and there are 3 different dates. Further it is submitted that the total EMIs payable was only 120 months, whereas the in the claim statement, the first respondent has stated that the loan is repayable in 264 monthly installments. On the above ground, the

learned counsel prays for setting aside the impugned award.

7. Mr.S.Namachivayam, learned counsel appearing for the first respondent finance company submitted that in terms of Section 24 of the Act, the Arbitral Tribunal has jurisdiction to decide as to the procedure to be adopted by it and it is not for the Court to direct strict rules of evidence or the procedure under the Code of Civil Procedure are not compulsorily enforceable before the Arbitral Tribunal. It is submitted that the loan was sanctioned on 30.06.2008 and in paragraph 4 of the petition filed to set aside the award, the petitioner himself had admitted that due to unavoidable circumstances, he was not able to make payment in the year 2010. This admission is sufficient to hold that the petitioner is a defaulter. Further by referring to the statement of accounts dated 30.06.2012, it is submitted that the bulk payment of Rs.18 lakhs made by the petitioner was reflected in the statement of accounts, out of which Rs.4 lakhs was adjusted on 11.01.2011, towards the principle and consequently the loan was rescheduled and the EMI was reduced to Rs.38,627 from Rs.63,315/- and as agreed to, for 18 months the respondent company did not initiate any action for recovery. Therefore, it is incorrect to state that the payments made by the petitioner were not accounted for, whereas the statement of accounts clearly shows that they have been given credit and in fact the first respondent company has given credit to a sum of Rs.4 lakhs towards the principle, which they cannot be compelled to do in terms of the

conditions in the agreement, but have done so bearing in mind the interest of the petitioner/borrower. Further, it is submitted that the loan agreement clearly states that the Courts in Chennai alone have exclusive jurisdiction and the venue of the arbitration shall be at Chennai at the registered office of the first respondent and the petitioner having signed the loan agreement cannot now question the same. Further it is submitted that the claim statement filed before the Arbitrator was pure and simple money claim and it is not a suit on mortgage and the claim was submitted to the arbitrator only on account of non payment of the loan availed by the petitioner and the award amount can be realised by the first respondent by resorting to execution proceedings. Further it is submitted that the award is very clear and it is a reasoned award and this Court exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after called the Act) should not interfere. With regard to the discrepancies mentioned in the award, it is submitted that the same can be treated as a typographical error and that may not vitiate the award. Further it is submitted that the award of interest by the learned Arbitrator is in accordance with Section 31 (7)(a) of the Act and there is no error in the award of interest at 18%, though the first respondent claimed interest at 48%. Further it is submitted that failure to inform the payments received by the first respondent from the petitioner, during the pendency of the arbitration proceedings, will not vitiate the award and it will be given full

credit as and when the first respondent executes the award for recovery.

8. The learned counsel referred to a decision of Bombay High Court in ***Laxmi Mathur Vs. The Chief General Manager, Mtnl.***, reported in **2000(4) BomCR 89** for the proposition that the Arbitral award is not open to challenge on the ground that the Tribunal has reached a wrong conclusion or failed to appreciate facts. To explain the scope of Section 3 of the Act, reliance was placed on the decision of the Honourable Division Bench in the case of ***A.Rama Goud Vs. M/s.Lakshmi General Finance Limited and others*** in **O.S.A.No.250 to 253 of 2009 dated 09.09.2009**. With regard to the scope of interference of the Court with the impugned award under Section 34 of the Act, reference was made to a recent decision of the Honourable Supreme Court in the case of ***Associate Builders Vs. Delhi Development Authority*** in **Civil Appeal No.10531 of 2014 dated 25.11.2014**. On the above grounds, the learned counsel seeks to sustain the impugned award.

9. I have heard the learned counsel for the parties and carefully perused the materials placed on record.

10. The first aspect to be considered is with regard to the jurisdiction of this Court and the venue of the arbitration at Chennai. It is not in dispute that the petitioner and the third respondent are signatories to the loan

agreement. In the said agreement clause 26 deals with the arbitration and clause 27 deals with the jurisdiction. The conditions states that the venue of arbitration proceedings shall be at Chennai at the registered office of the company. The petitioner has agreed to a fast track arbitration to be disposed of within 90 days from the date of reference. With regard to the jurisdiction, the petitioner agreed and accepted that all the terms and conditions of the agreement including the payment shall be observed and performed at Chennai and the petitioner has agreed that Courts in Chennai alone shall have exclusive jurisdiction over any matter arising out of or concerning the loan agreement. The above conditions form part of the loan agreement, to which the petitioner as well as the third respondent have been signatories. Having signed the agreement and accepted the conditions, now the petitioner cannot resile from the same. Therefore, it is held that the arbitration, which was commenced, conducted and award passed at Chennai, is with jurisdiction and this Court has jurisdiction to entertain any challenge to the said award. Therefore, the first issue is decided against the petitioner.

11. The second aspect is whether the claim made by the first respondent is a suit on mortgage or a pure money claim. It may be true that the claim statement contains the schedule of the property and the arbitration award also contains the schedule of the property offered as security. It is not

in dispute that the loan availed by the petitioner is home equity loan. This is evident from the sanction letter dated 30.06.2008. The property, which was offered as security has been mentioned in the sanction letter itself. Further the claim statement filed before the learned Arbitrator was pure and simple money claim and it is not a suit for recovery of money on a mortgage as projected by the petitioner. Therefore, it is held that the claim made by the first respondent is a pure money claim. The discrepancies pointed out by the learned counsel for the petitioner in the loan agreement alleging that certain details have been left, blank, etc., are of little avail, more so in proceedings under Section 34 of the Act. This Court has perused the documents and finds that relevant details have been filled up and the petitioner and the third respondent have also signed in more than 100 places and therefore, it is too late for the petitioner to raise such contentions.

12. The next aspect to be considered is whether the petitioner had due notice of the proceedings. All the notices sent by the Arbitrator, had returned with the endorsement "intimation delivered". This means that the postal department has intimated about the notice in the given address with direction to come to the post office to collect the registered letter. This intimation is given by the postal department, when the addressee is not available or the person who is available is not authorized to receive the registered letter. The

postal authorities cannot be expected to indefinitely wait with the cover after giving the intimation and after a reasonable period of time, three days, the cover will be sent back to the person, who had addressed the letter. This procedure has been adopted in the instant case and this is sufficient to hold that the petitioner and the third respondent had notice of all the proceedings. The contentions raised by the petitioner's counsel regarding the endorsement in the postal cover etc are all stated to be rejected, as the Court has examined the original document and it appears to be in order.

13. The next aspect of the matter on which great emphasis was laid by the learned counsel for the petitioner is that the bulk payment effected by the petitioner has not been accounted for. This submission appears to be factually incorrect. Since the bulk payment has been accounted for and out of the same, a sum of Rs.4 lakhs has been adjusted towards principal and this is the reason why the EMI got reduced to Rs.38,627/- from 63,315/-. Therefore, the statement of accounts cannot be faulted.

14. This leaves us with the last but substantial ground of challenge to the impugned award, on the ground that the impugned award is unfair and unreasonable, thereby infringing upon the fundamental policy of Indian law.

15. In the case of *ONGC Limited Vs. Western Geco International Limited* reported in **2014 (9) SCC 263**, the Honourable Supreme Court considered the question as to what then would constitute the fundamental policy of Indian law and it was held as follows:

“35. What then would constitute the “fundamental policy of Indian law” is the question. The decision in *ONGC [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]* does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression “fundamental policy of Indian law”, we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The *first and foremost* is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a “*judicial approach*” in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in

judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our

jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of *Wednesbury principle* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is

not severable from the rest.”

16. The above decision was followed by the Honourable Supreme Court in the case of ***Associate Builders Vs. Delhi Development Authority*** (cited supra) and it was held that the juristic principle of a judicial approach demands that a decision be fair, reasonable and objective. On the converse, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective. The Honourable Supreme Court explained the principle with regard to perversity or rationality of the decision and held that when a finding is based on no evidence or an arbitral tribunal takes into account something irrelevant to the decision which it arrives at or ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

17. In ***P.R.Shah, Shares I Stock Borkers (P) Ltd. Vs. B.H.H. Securities (P) Ltd.***, reported in ***(2012) 1 SCC 594***, it was held that a Court does not sit on appeal over the award of an arbitral tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act.

18. Therefore, to bring a challenge to the impugned award it should be brought under the grounds mentioned in Section 34(2) of the Act. The

fundamental requirement is that the Arbitrator must have a judicial approach and that he must not act perversely and when he does so the award would be against public policy, if it is against justice or morality and when it shocks the conscience of the court. With regard to the aspect to what is patent illegality, explaining the challenge on the ground of public policy, after referring the various decisions, it was held that a contravention of the substantive law of India would result in the death knell of an arbitral award; contravention of the Arbitration Act itself would be regarded as a patent illegality and the arbitral tribunal must decide in accordance with the terms of the contract.

19. Bearing the above legal principles in mind, if the impugned award is tested, this Court has no hesitation to hold that the impugned award is an out come of non application of mind and vitiated by patent illegality, as there has been no judicial approach by the learned Arbitrator, which would constitute the fundamental policy of Indian law when an award is passed. It appears that the learned Arbitrator did not notice the errors which have occurred. The said errors are sought to be explained as typographical errors, however, the learned Arbitrator took no steps to rectify the errors. The first respondent cannot speak for the Arbitrator on this aspect. The Arbitrator has not taken any stand that there is a typographical error in the award. The date of claim statement cannot precede the date of nomination of the arbitrator.

The Honourable Supreme Court while explaining as what would be the judicial approach, had pointed out that the basis of principles of natural justice requires application of mind to the attendant facts which is an essential feature and non application of mind is a defect that is fatal to any adjudication. Though it may be true that the Arbitral Tribunal is not a court nevertheless the adjudication process done by the Arbitral Tribunal should be fair and the award should speak for itself as the parties have not made any agreement that the award need not give any reasons.

20. A cursory reading of the impugned award would clearly show that the Arbitrator has not even endeavoured to examine as to on what basis the first respondent company had made a claim for Rs.33,97,383/- assuming that the statement of accounts were placed before the Tribunal. The award should set out, as to how the first respondent had made such a claim. This Court has held that the petitioner had notice of all the proceedings. Be that as it may, even an *exparte* award as that of a contested award, is enforceable. Merely because the petitioner remained *exparte*, it does not mean that the first respondent is automatically entitled to the award. The Arbitrator should have endeavoured to discuss as to the nature of the claim made and how the claimant/first respondent has made out a case. The first two paragraphs briefly of the impugned award states about the amount claimed. Paragraph Nos.A and B states about the notices which were sent. Followed by which,

Section 3 of the Act has been extracted and the learned arbitrator concluded that notices have been served on the petitioner and the third respondent and they were set exparte on 06.09.2012. Paragraph No.3 deals with the opinion of the Arbitral Tribunal that the petitioner is absenting himself with a view to defeat the object of the reference. Learned Arbitrator referred to the evidence of P.W.1 said to have been recorded on 11.10.2012. However, she has not stated as to what is the gist of the evidence nor there is reference to the documents marked through P.W.1. Paragraph No.4 once again deals with the claim. On a reading of Paragarph No.5 (a) to (d), it is seen that the same is bereft of particulars and the arbitrator has not even endeavoured to discuss the basic facts as to when the defaults had occurred etc. This Court should not have been misunderstood as acting as an appellate Court over the award of the Arbitrator. But this finding is rendered to show that there has been violation of principle of natural justice and it clearly shows non application of mind on the part of the Arbitrator. While in paragraph No.7, the documents which were produced by the first respondent has been referred to and the learned Arbitrator framed two issues, with regard to the first issue, which pertains to whether the petitioner and the third respondent are jointly and severally liable to pay the claim amount. The learned Arbitrator has referred to Exs.A7 and A8 and stated that the default committed by the petitioner is explicit. Ex.A-7 is the statement of accounts and Ex.A-8 is the letter dated

30.06.2012.

21. In the considered view of this Court, this averment does not show as to when the default had occurred especially when the statement of accounts reflected that a bulk payment of Rs.18 lakhs was paid by the petitioner. This Court can therefore, safely conclude that the Arbitrator did not go through the statement of accounts even in a cursory manner and has failed to notice the payments effected and how the adjustment was made and has not even referred to the reduction of EMI by almost 50%. Thus, it is evident that there has been totally non application of mind on the part of the Arbitrator. Ultimately, the Arbitrator concluded that the claimant is entitled to the amount claimed by them in the claim statement with interest at 18%. However, while concluding that the first respondent is entitled to the amount as claimed by them in full, an endeavour should have been made by the Arbitrator to reason out as to how they are entitled to the claim. There is no discussion on Ex.A7, the statement of accounts. Issue No.2 relates to the cost of the proceedings and there is nothing to be stated on the same.

22. Thus, this Court is of the firm view that the Arbitration proceedings have been conducted in a mechanical manner without due application of mind with no discussion and merely because, the award runs to 8 pages, it cannot be

stated to be a reasoned award. It is incumbent upon the arbitrator to undertake an exercise to examine the documents stated to be placed before the Tribunal and then render a finding on the claim. One more reason for making such an observation is because this is not a classical case of mere default in the EMI's but a case where bulk payments have been made and portion of the bulk amount has been adjusted towards the principal, which has resulted in the reduction of EMI. The learned Arbitrator has failed to note this important feature as has not endeavoured to arrive at the correct outstanding, but mechanically awarded the entire claim. Therefore, the Court can safely conclude that the Arbitral Tribunal was not aware of the same and there was no application of mind. For all the above reasons, the impugned award is liable to be set aside.

23. In the result, the Original Petition is allowed and the impugned award is set aside and the matter is remanded to the first respondent to appoint a fresh Arbitrator other than the second respondent to enter upon reference and proceed in accordance with law. After this order was dictated, the learned counsel for the petitioner submitted that the petitioner is ready and willing to go before any other arbitrator other than the second respondent herein and the petitioner may be given full opportunity. The said statement is taken on record and the Arbitrator to be appointed by the first respondent shall proceed in accordance with law.

vsm

15.02.2017

T.S.SIVAGNANAM, J.

vsm

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