

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.919 of 2016

Siddhi Vinayak Enterprises
rep. by its Proprietor R.Devika ... Petitioner

Vs.

1.The Senior Divisional Commercial
Manager, Divisional Office,
Chennai Division, Southern Railway,
Chennai - 3.

2.The Catholic Syrian Bank Limited
rep. by its Chief Manager,
Pallavaram, Chennai - 43.

3.A.Sundar,
Sole Arbitrator and Deputy
Chief Commercial Manager/PRS,
Southern Railway, Chennai - 3.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation

Act, 1996 to set aside the award dated 01.12.2016.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.P.T.Ramkumar for R1

ORDER

The petitioner is a contractor. Certain claims have been made, pursuant to which, a request was made for appointment of an Arbitrator on 22.11.2015. Accordingly, sole Arbitrator was appointed, after coming into force of the amendment to Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator appointed by the first respondent went into the merits and passed an award. It is accordingly challenged before this Court.

2.The only submission made by the learned counsel appearing for the petitioner is that as per Clause 26(3) (a) (ii) of the General Conditions of Contract (for short 'GCC') when the valuation in the claim is more than Rs.10 lakhs, the Tribunal shall constitute three members. Thus there is a fundamental error in the award passed. As there is no jurisdiction to the learned Arbitrator, the matter will have to be sent back to the three member one.

3.Learned counsel appearing for the first respondent would submit that though Section 12 (5) of the Arbitration and Conciliation Act, 1996, speaks about constitution of the Tribunal which is having

any relationship with the parties and thus creating the bar, the proviso provides for dispensing with the same by express agreement in writing. The petitioner did not raise any objection and therefore it should be construed as agreement in writing.

4. Though the submission of the learned counsel appearing for the first respondent appears to be attractive, the same cannot be countenanced insofar as the adjudication by single Arbitrator is concerned. Admittedly, Clause 26 (3) (a) (ii) of GCC binds both parties. Further more, even in the agreement inter se parties, the aforesaid clause is incorporated. Therefore, looking from any perspective, the constitution of the Tribunal with a single member cannot be sustained in the eye of law, as admittedly, the claim exceeds Rs.10 lakhs.

5. Now the only other question to be considered is as to whether the constitution can be by three member panel to be chosen by the first respondent. So far as this is concerned, this Court finds some force in the submission made by the learned counsel for the first respondent. For the appointment of an officer of the first respondent to act as a Tribunal, there was no objection earlier. On a query, learned

counsel appearing for the first respondent also submits that this Court can construe that there is an express agreement in writing for such appointment. In other words, learned counsel submits that there is no objection for constitution of three member panel from the officers of the first respondent.

6.To the apprehension expressed by the learned counsel appearing for the petitioner that a member of the panel would not have relationship in whatsoever manner touching upon the contract or the dispute, learned counsel appearing for the first respondent submits that the said apprehension would be addressed as in no case it would be done. It is further submitted that a panel of qualified members would be given and the petitioner will also be asked to choose three members from the panel. This methodology is also acceptable to the learned counsel for the petitioner.

7.In such view of the matter, the award stands set aside. The first respondent is directed to constitute a new panel of three members who do not have any relationship either with the contract or the dispute which is the subject matter of the arbitration and they would be selected only with the consent of the petitioner, who, after the list

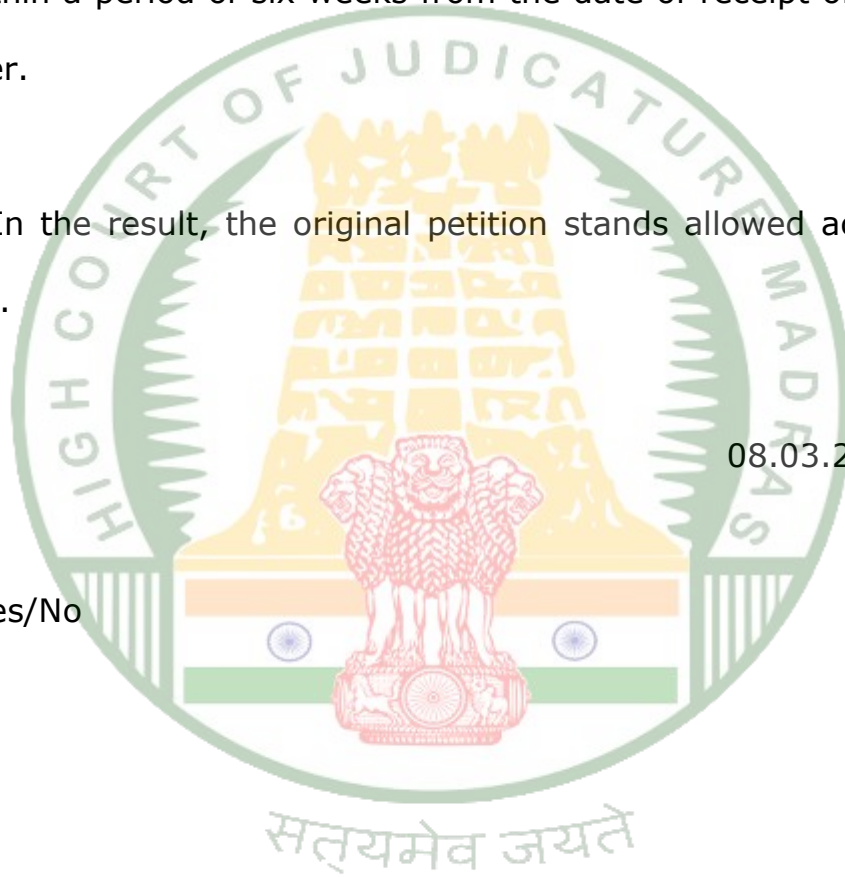
of panel being furnished, is entitled to select three out of it. Inasmuch as the award is set aside only on technical ground, the bank guarantee furnished is directed to be kept alive till the disposal of the arbitration proceedings. The entire exercise as indicated above will have to be done within a period of six weeks from the date of receipt of a copy of this order.

8. In the result, the original petition stands allowed accordingly.

No costs.

08.03.2018

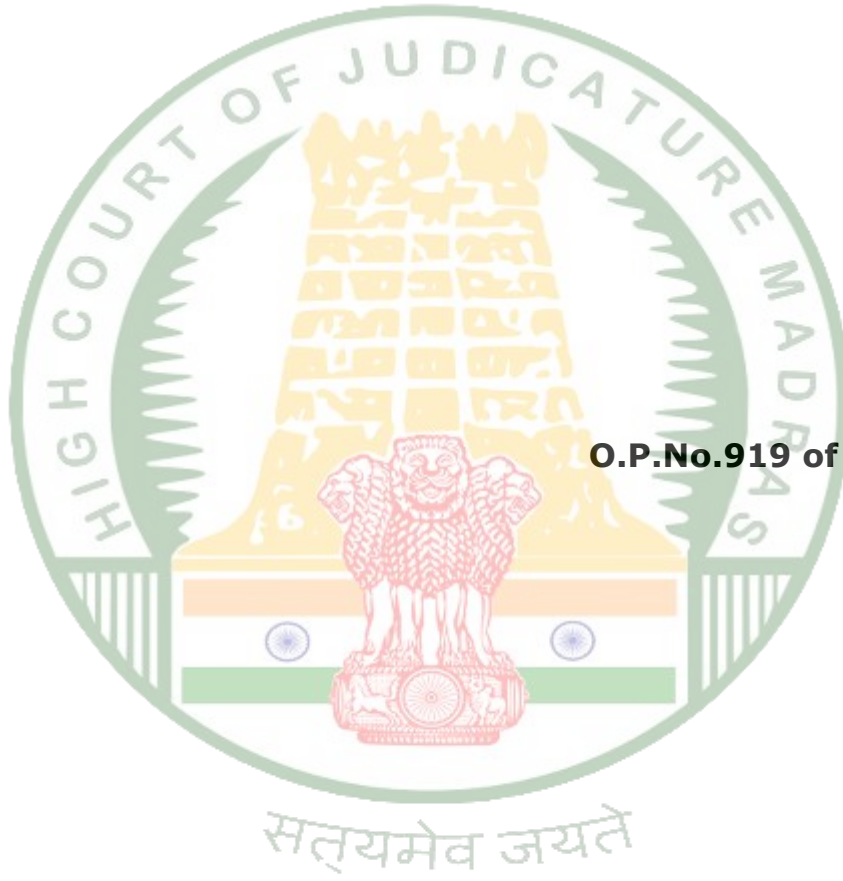
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M.M.SUNDRESH,J.

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