

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.513 of 2017

A School India Private Limited
Rep. By its Authorised Representative
Mr.Palaniappan R M
7th Floor, Rani Seethai Hall
603, Anna Salai, Chennai - 600 006. .. Petitioner

VS.

Mrs.Kiruthika
W/o.T.Mathiarasan
No.45, Vidhya Apartments
Bazaar Street, Nesapakkam
Chennai - 600 078. ... Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 10.08.2016 passed by the Sole Arbitrator; award costs to the petitioner and pass any further or other orders that may be deemed fit and proper in the facts and circumstances in the present case and thus render justice.

For Petitioner : Mr.K.Prahalad Bhat

For Respondent : Mr.M.Velmurugan

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ORDER

Instant 'Original Petition' ('OP' for brevity) has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996' ('A & C Act' for brevity)

assailing an 'arbitral award dated 10.08.2016' ('impugned award' for brevity) made by an 'Arbitral Tribunal' ('AT' for brevity) constituted by a sole Arbitrator, who is a former District Judge.

2. Section 34 in the scheme of A & C Act finds its slot under Chapter VII of A & C Act, which is captioned 'RECOURSE AGAINST ARBITRAL AWARD'. A perusal of Section 34 of A & C Act also reveals that recourse to Court against an arbitral award may be made by an 'application'. Also to be noted, the very caption to Section 34 of A & C Act reads 'APPLICATION FOR SETTING ASIDE AN ARBITRAL AWARD'. Be that as it may, such recourse against an arbitral award is being assigned the nomenclature 'Original Petition' in this Registry. Therefore, I shall refer to the instant proceedings as 'OP' for the sake of convenience and clarity.

3. Dispute arises out of an agreement styled 'Franchise Agreement dated 25.03.2011' (hereinafter 'said agreement' for brevity).

4. Said agreement was for a period of five years and under the said agreement, petitioner in instant OP as franchisor had given on franchise a holistic education imparting service with an emphasis on activity based learning and creative expression for children between the ages 1 ½ years and

6 years with teacher to student ratio of 1:20. It is not in dispute that vide said agreement, the aforesaid business (hereinafter referred to as 'running play schools') was given on franchise. The franchisor shall *inter alia* provide on-line curriculum manual and updates for the same by way of a package. It was also agreed that franchisor petitioner shall provide continuing assistance to the franchisee (to be noted respondent in instant OP is franchisee) for running play schools.

5. The sum and substance of said agreement or the business model under the said agreement is to the effect that the play schools are to be run by the franchisee respondent in accordance with the curriculum provided and the fee collected from the children/students shall be directly paid to the account of franchisor petitioner, after which the franchisor shall pay out 73% of the fees so collected to the franchisee respondent. With regard to the balance 27%, while 20% is to be retained by the franchisor petitioner towards its share of profit, 7% is to be spent by the franchisor petitioner towards marketing and advertisement expenses.

6. There is also no dispute or disagreement that there is an arbitraion Clause in the said agreement and the said arbitration Clause is Clause 25, which reads as follows:

'25.Arbitration:

The parties hereby agree that in the event of any disputes or differences that may arise between the parties in connection with the matters touching upon this Agreement the same shall at the instance be resolved in good faith and by mutual discussion. If the parties are unable to resolve the same by mutual discussion, the same shall be referred for adjudication through arbitration provided that:

25.1 Prior to the parties going for arbitration a mandatory discussion shall be entered into between the parties for which a one week notice shall be given by the party desiring the discussions for a meeting. A period of 15 days from the date of the meeting shall be provided for reaching a consensus between the parties. Only on a deadlock in the discussion, the arbitration proceeding shall commence.

25.2 The Arbitration Tribunal shall consists of a Sole Independent Arbitrator to be nominated by the Franchisor.

25.3 All hearing shall be held in Chennai and the language of the arbitration shall be in English.

25.4 The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996.

25.5 The Award of the Sole Arbitrator in such proceeding shall be final and binding on the parties herein.

Notwithstanding anything contained herein in the event of any breach or apprehended breach by the Franchisee of the provisions of this Agreement, the Franchisor shall be entitled, in addition to all other remedies, to an injunction whether interlocutor or preliminary, restraining any such breach, without recourse to arbitration.'

7. Said agreement started operating between the franchisor petitioner and franchisee respondent. While the said agreement was operating and while

the play schools were being run, trouble erupted. A writ petition came to be filed in this Court alleging that the play schools are being run without proper compliance with statutory requirements. This Court, in the writ petition, directed the statutory authorities to take action including closure of play schools for non-compliance with statutory provisions. Order passed by a Hon'ble Single Judge of this Court is a reported judgment and the same is reported in **(2011) 8 MLJ 809 [V.Krishnamoorthy and others Vs. State of Tamil Nadu]**.

8. The relevant paragraph in the aforesaid report judgment is paragraph 43 and the same reads as follows:

'43. For the foregoing reasons, this Court is of the firm view that the petitioners have made out a case for taking appropriate action against 36 schools run by the respondents 7 and 8, by respondents 1 to 4. Hence, a direction is issued to the respondents 1 to 4 to initiate action against 36 schools in compliance with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules 1974 and Code of Regulations for approved Nursery and Primary Schools in Tamil Nadu notified in G.O.Ms.No.484, Education Department, dated 24.04.1991 and relevant laws within four weeks. As the petitioners are objecting the exorbitant demand of fees from their children, the respondents 7 and 8 are restrained from demanding any further fee from the petitioners till action is taken by respondents 1 to 4'.

9. To be noted, respondents 7 and 8 in the aforesaid reported judgment are as follows:

'7.The Management of Chettinad

Foundation A-School

Rep. By its Governor/Administrator

Chettinad Foundation Office

Rani Seethai Hall

603, Anna Salai

Chennai - 600 005.

8.Annamalai Chettiar

Founder

A-School Chettinad Foundation

603, Anna Salai

Chennai - 600 005.'

10. It is not in dispute before this Court that 7th respondent is a Trust, which founded the franchisor petitioner company and that the 8th respondent is the founder and therefore, the prime mover qua franchisor petitioner.

11. Thereafter, it is not in dispute that another set of writ petitions on the same issue i.e., the issue that the play schools are being run without requisite statutory permissions and in violation of statutory provisions came to be filed and the same was disposed of by a Hon'ble Division Bench of this Court

vide order dated 03.06.2014. Most relevant paragraphs of the Hon'ble Division Bench of this Court dated 03.06.2014 made in the writ petition Nos.34709 of 2013 and 4040 of 2014 are paragraphs 11 and 12 and the same read as follows:

'11. It is represented that no further challenge in the form of writ appeal, has been made to the said order and it has become final. It is also the stand of the official respondents that all 36 schools run by the 7th respondent Management, have been closed and stringent action is being taken by the Education Department and the show cause notice has also been issued calling for their explanation. Admittedly, the respondents 7 and 8 had run the schools without any recognition and collected fees without any norms and therefore, they are also bound to compensate the petitioners for having admitted the students knowing pretty well that they did not have recognition, and also collected fees.

12. In the result, both the writ petitions are disposed of by directing the official respondents to accommodate the children, who have studied in A-Schools run by the seventh respondent, in other recognised CBSE institutions preferably nearby to the area, in which, they are residing, in terms of Sections 4 and 5 of the Right of Children to Free and Compulsory Education Act, 2009, and the respondents 7 and 8 are directed to issue Transfer Certificates forthwith to all the children studied in the above said schools. The respondents 7 and 8 are further directed to pay jointly and severally Rs.15,000/- (Rupees fifteen thousand only) to the parents of the wards/students admitted in A-Schools by way of interim compensation, within a period of four weeks from the date of receipt of copy of this order and without prejudice to

their rights and contentions and the parents of the wards/children are also at liberty to approach the competent forum for getting refund of the fees as well as for claiming further compensation. No costs. Consequently, connected MPs are closed.'

12. There was also a review, seeking review of aforesaid order of the Division Bench dated 03.06.2014 vide Review Application Nos.174, 175, 177 and 178 of 2014. Review applications came up before the same Hon'ble Division Bench and the Hon'ble Division Bench disposed of the review petitions vide order dated 03.11.2014 and the operative portion of the order is contained in paragraphs 29 and 30, which read as follows:

'29.In the considered opinion of the Court, there is no patent error or mistake of law in the impugned common order and sufficient reasons were assigned as to the award of compensation. The review applications lack merit and are dismissed. No costs. Consequently, connected MPs are also dismissed.'

30.Respondents 12 to 15 shall ensure that students studied in 'A' Schools are accommodated in other Schools and also monitor and take action against Schools running without recognition and proper infrastructure facilities.'

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13. Owing to the aforesaid scenario, the franchisee respondent issued a notice dated 28.09.2013 to the franchisor petitioner alleging that they have been left high and dry and the franchisee chose to invoke the arbitration

clause. To be noted, the contents of the notice reveal that this may not qualify as a notice, receipt of which by the franchisor petitioner can be construed as the date of commencement of arbitral proceedings within the meaning of Section 21 of A & C Act. In other words, from the contents of the notice it cannot be construed that there is a request to refer the disputes to arbitration. There is only an expression of the intention to refer the disputes to arbitration. However, this matter may at best be left at this and it is not necessary to delve further into this aspect of the matter as this is not imperative for disposal of the instant OP owing to the grounds on which instant OP is predicated. Thereafter, franchisor petitioner ultimately terminated the said agreement on 01.03.2014. Sole Arbitrator, who constituted the AT was nominated by the franchisor petitioner and the franchisee respondent consented. Sole Arbitrator, a former Judge, so nominated by the franchisor petitioner and consented to by franchisee respondent entered upon reference on 13.05.2014.

14. Before AT, the franchisee respondent was the claimant and the franchisor petitioner was the respondent. However, for the sake of convenience and clarity, parties shall continue to be referred to as petitioner franchisor and respondent franchisee.

15. Respondent franchisee, as claimant before AT, made nine claims and the same, as can be culled out from the claim statement, read as follows:

'Claim 1 - directing the respondent to pay a sum of Rs.1,56,423/- (Rupees One Lakh Fifty Six Thousand Four Hundred and Twenty Three only) along with an interest at the rate of 18% p.a., till the date of realization, payable by the respondent to the claimant under the Franchise agreement being the 73% share of revenue unauthorisedly with held by the respondent.

Claim 2 - to declare the letter of termination of the franchise agreement, dated 01.03.2014 issued by the respondent as illegal and null and void.

Claim 3= direct the respondent to refund the sum of Rs.5,00,000/- (Rupees Five Lakhs Only) paid as licence fee paid under the franchise agreement, along with interest @ 18% till the date of realization to the claimant.

Claim 4 - direct the respondent to refund the sum of Rs.3,64,000/- (Rupees Three Lakhs and Sixty Four Thousand only) received as material fee under the franchise agreement to the claimant, along with interest @ 18% till the date of realization to the claimant.

Claim 5 - direct the respondent to refund the sum of Rs.4,98,060/- (Rupees Four Lakhs Ninety Eight Thousand and Sixty Only) received as advertising and marketing fund under Cl.10 of Franchise agreement to the claimant, along with interest @ 18% till the date of realization to the claimant.

Claim 6 - to declare the Cl.15.2 (Post termination restrictions on the franchisee) of franchise agreement as illegal and null and void.

Claim 7 - direct the respondent to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) as compensation to the claimant for disrepute, mental agony and hardship caused to claimant.

Claim 8 = direct the respondent to pay a sum of Rs.97,73,787/- (Rupees Ninety Lakhs Seventy Three Thousand Seven Hundred and Eighty Seven Only) to the claimant towards loss of revenue and profit incurred under the franchise agreement.

Claim 9 - direct the respondent to pay the cost of this arbitration to the claimant and pass such further or other orders/directions in the award, deem fit and proper in the aforesaid circumstances of the case and thus render justice.'

16. The petitioner franchisor, as sole respondent before AT, filed a statement of defence and counter claim. Counter claim made by the petitioner franchisor as can be culled out from the prayer in the statement of defence counter claim is reads as follows:

'....b) Direct the claimant to pay the sum of Rs.2,90,000/- with interest @ 18% from the date of demand to the date of payment to the respondent;

c) i) Pass an order of permanent injunction, restraining the claimant from acting in derogation of Clause 15 of the Franchise Agreement between the parties ii) or in the alternative, direct the claimant to pay a sum of Rs.3,00,00,000/- as damages for breach of Clause 15 of the Franchise Agreement between the parties;.....'

17. It is submitted before this Court that a sum of Rs.2.9 crores has been claimed by the petitioner franchiser towards the alleged use of Intellectual Property Rights (trade mark, copy right, etc.,) by the franchisee. This Intellectual Property Rights shall be referred to as 'IPR' for the sake of convenience and clarity.

18. As far as the second limb of the counter claim which pertains to Clause 15 of said agreement, a perusal of Clause 15 of said agreement reveals that it is in the nature of a non-compete clause. A further perusal of the second claim of the counter claim also reveals that it is more in the nature of an exact reverse of claim No.6 made by respondent franchisee.

19. Thereafter, the respondent franchisee filed a rejoinder which also is a statement of defence qua the counter claim. On the rival pleadings, AT framed 7 issues, which are as follows:

'1. Whether the respondent had acted in violation of the Principles of Indian contract Act and Specific Relief Act and provisions of the Agreement entered into between both the parties?

2. Whether the claims are barred by Acquiescence or Estoppel?

3. Whether the Franchise Agreement has come to an end and stands terminated by operation of Law?

4. Whether the claimants have breached the provisions of the contract Act between the parties?

5. Whether the claimants have breached the provisions of Clause 15 of the Agreement?

6. Whether the claims and reliefs sought for by both parties are maintainable?

7. To what reliefs are the parties entitled?

20. To be noted, this OP is heard out along with three other OPs arising

out of similar disputes on common factual matrix i.e., disputes between petitioner franchisor and three other franchisees. The impugned awards therein are more or less identical.

21. In the impugned award in instant OP, the paragraph containing the issues has been left out and it is submitted by both sides that this is a typographical and an inadvertent secretarial error. Therefore, the issues, as framed in the other three awards being impugned awards in other three OPs, which are heard out along with instant OPs, are extracted and reproduced here. There is no dispute or disagreement that the aforesaid seven issues are the issues on which impugned award in instant OP was heard and determined.

22. Before AT, on the side of respondent franchisee (claimant before AT) one witness viz., C.W.1 was examined and on the side of petitioner franchisor one witness viz., R.W.1 was examined. To be noted, R.W.1 is respondent No.8 in the writ petition before the Hon'ble Single Judge as well as before the Division Bench details of which have been adverted and alluded to supra.

23. In the aforesaid backdrop, AT dealt with each of the seven issues and returned its findings. The operative portion of the impugned award is contained in paragraph 92 and the same reads as follows:

'In the result, Award is passed directing the respondent

- 1. to pay the claimant a sum of Rs.1,56,423/- with interest at the rate of 18% per annum till the date of realization being 73% share of revenue withheld by the respondent.*
- 2. to pay the claimant a sum of Rs.5,00,000/- as licence fee under the Franchise Agreement with interest at 18% per annum till the date of realization.*
- 3. to pay the claimant a sum of Rs.4,98,060/- as advertising and marketing fund with interest at 18% per annum till the date of realization.*
- 4. to pay the claimant a sum of Rs.87,49,853/- being the balance of revenue payable by the respondent with interest at 18% per annum till the date of realization.*
- 5. to pay the claimant a sum of Rs.3,64,000/- being material fee with interest at 18% till the date of realization.*
- 6. to declare that the respondent is not liable to pay a sum of Rs.5,00,000/- as compensation to the claimant for disrepute, mental agony and hardship caused to the claimant.*
- 7. to declare the letter of termination of the Franchise Agreement issued by the respondent is null and void.*
- 8. The counter claim made by the respondent is dismissed.*
- 9. In the circumstances of the case, each party to bear their own costs.'*

24. A perusal of the operative portion of the impugned award will reveal that with regard to the nine claims made by respondent franchisee which have been extracted and reproduced supra, claim No.7, which pertains to compensation for disrepute, mental agony and hardship, have been rejected

fully and the other claims have been acceded to. It also comes to light that the counter claim made by the petitioner franchiser has been rejected.

25. In the aforesaid circumstances, petitioner franchisor has come up with the instant OP.

26. Today, Mr.K.Prahalad Bhat, learned counsel representing the counsel on record for petitioner franchisor and Mr.M.Velmurugan, learned counsel for respondent franchisee were before this Court.

27. Both the learned counsel advanced arguments.

28. The submissions made by learned counsel for petitioner franchiser is essentially three fold and the same can broadly be summarised as follows:

a) respondent/ franchisee cannot rescind from the agreement and also claim under the said agreement.

b) claims that have been acceded to vide the impugned award by AT are against the provisions of said agreement or in other words, it is virtually different from the covenants in the said agreement.

c) prayer of the franchisee for 73% being acceded to is

impermissible as it is obvious to highlight that there is non-performance of the franchisee.

29. In support of the first contention, learned counsel for petitioner, pressed into service a English judgment being a judgment made by House of Lords in *Johnson Vs Agnew*. Learned counsel drawing the attention of this Court to relevant portions of said judgment, submitted that the principle is whenever there is rescinding of agreement, it cannot be construed as rescinding *ab initio* with the exception of certain clauses of agreement which become void on the ground of mistake, fraud, lack of consent.

30. Furthermore, it was also argued that the damages, if any, have to be in the alternative, it is impermissible to seek damages and specific performance simultaneously in one composite claim.

31. To avoid prolixity, this Court does not extract the relevant paragraphs and portions of Agnew judgment, though it makes good reading and the language is a delight to read.

32. The articulation of the principles are nicely and subtly articulated using finesse of the language.

33. Be that as it may, with regard to the proposition that the franchisee cannot rescind and also claim, it is to be seen from the narrative thus far that the entire said agreement came to a grinding halt and play schools were closed owing to aforementioned Court orders. Therefore, breach can be attributed only to the petitioner franchisor as the Hon'ble single Judge of this Court as well as Division Bench of this Court vide the aforesaid orders has clearly held that the model on which the play schools were run is in violation of statutory provisions and compliance requirements therein. Therefore, it cannot be gainsaid that it is a case where the franchisee is rescinding from the agreement and also making a claim under the said agreement.

34. This takes us to the next ground.

35. The next ground is that the claims are against/contrary to the covenants in the agreement.

36. A perusal of the grounds, in the instant OP reveal that the crux and gravamen or the thrust of the submissions which in other words can be described as sheet anchor submission with regard to impugned award is it is in contravention of covenants of said agreement. These are relatable and

traceable to clauses 17.6 and 20.2 of said agreement which read as follows:

'Clause 17.6: All or any financial information relating to the operation of, including, but without prejudice to the generality of the foregoing, forecasts, budgets and performance ratios or cash flow projections provided to the Franchisee by or on Franchisor's behalf or any of Franchisor's employees or agents, whether before the signing or during the continuation of this Agreement, is provided on the basis that such information is for guidance only and shall in no way be treated by the Franchisee as a warranty, representation or guarantee. The Franchisee acknowledges that the Franchisee have not and will not rely upon such financial information.

Clause 22. Approvals and consents:

Any approval or consent given under this Agreement shall be valid only if given in writing by (2 of Franchisor's directors). The Franchisee may not claim any money, damages, remedy by way of set-off, counterclaim, or defence or otherwise, based upon any claims or assertion that the Franchisor have unreasonably withheld or unreasonably delayed any consent or approval required under this Agreement.

37. To be noted, instant OP runs to 38 pages and 76 paragraphs. More importantly 76 grounds have been raised.

38. This Court, from the arguments made by learned counsel for petitioner franchisor and on a perusal of the grounds, has culled out the

aforesaid three submissions.

39. The second limb of submission, if it is to be given a legal expression, it can be said to be under Section 28(3) of A & C Act. Section 28(3) of A & C Act mandates that an Arbitral Tribunal in all cases shall decide in accordance with the terms of the Contract. To be noted, an arbitral Tribunal in all cases shall decide in accordance with the terms of the contract, was the position that existed in the statute prior to 23.10.2015. This Court notices that post 23.10.2015, the expression 'decide in accordance with the contract' has been replaced with the expression 'take into account the terms of the contract'. This March of law is noticed only for this Court to remind itself about the scope of sub-Section (3) of Section 28. Be that as it may, it does not end there. A careful reading of sub-Section 3 of Section 28 of A & C Act brings to light that AT shall also take into account trade usages applicable to any transaction.

40. In the instant case, a perusal of the award reveals that AT has considered extensively and exhaustively the deposition of CW1 (to be noted, respondent No.8 in the writ petition i.e., founder of petitioner franchisor) has come to the conclusion and returned a finding as to how the parties have understood the terms of agreement.

41. For an illustration, this is articulated in paragraph 81 of the impugned award, which reads as follows:

'81. The respondent herein i.e., the Managing Director was also the Founder and Trustee of "A School" and "Chittenadu Foundation" as admitted by RW1. C.W.1 had parallelly administrated the said foundation i.e., A school foundation, which was governing and administering "A School" at various places in and around Chennai nearby districts. The witness C.W.1 has admitted his personal knowledge of the writ petitions in W.P.Nos. 20336/2011 and 34709/2013 and Review Application in 174 to 178/2014 vide Ex C24, in which the respondents 7 and 8 in the writ petitions.'

42. The aforesaid extract, besides bringing to light the position that AT has appreciated oral and documentary evidence before it, AT has also returned findings and given conclusions as to how the parties have understood the terms of the covenant and how the parties have put the same into practice. It also brings into sharp focus the factual position that the play schools were brought to a grinding halt and the closure was owing to order of this Court. To be noted, out of three orders of this Hon'ble Court, one was made by a Hon'ble Single Judge and the other was made by a Hon'ble Division Bench, which was subsequently confirmed in a review also.

43. This takes us to the last limb of the arguments which pertains to the respondent franchisee not being entitled to 73% and the sequitur submission that the AT ought not to have acceded to the prayer of the respondent franchisee for 73% component as admittedly there was non-performance and the venture become a virtual non-starter owing to reasons alluded to supra. It is not in dispute that the franchisee could not perform owing to the intervention of the Court orders and it is not anybody's case that the franchisee did not perform. Be that as it may, 73% which the respondent franchisee has claimed as can be culled out from the impugned award is for the period for which the play schools were run prior to their ultimate closure and therefore, this argument does not carry the petitioner franchisor, much it's less campaign in instant OP under Section 34 of A & C Act.

44. Also to be noted, this Court has reminded itself that the time honoured Hodgkinson principle has been explained by the Hon'ble Supreme Court in *Associate Builders Vs. Delhi Development Authority* case reported in **(2015) 3 SCC 49**. Hodgkinson principle in very simplistic terms is a principle which lays down that AT is the best and sole Judge of the quality and quantity of evidence before it, the only exception perversity/irrationality in appreciation of same. With regard to perversity/irrationally, the Hon'ble Supreme Court in *ONGC Ltd., Vs. Western Geco International Ltd.*, reported

in **(2014) 9 SCC 263**, culled out three juristic principles and held that the test for perversity/irrationality is a time honoured *Wednesbury* principle of reasonableness. In very simple language *Wednesbury* principle of reasonableness is to the effect that the conclusions arrived at by AT should be so unreasonable that no reasonable person could have arrived at such conclusion on the basis of materials before it.

45. The phenomenon/determinant that has been added to the facet of public policy qua testing the arbitral awards of Arbitral Tribunal under Section 34 of A & C Act is that it should be so unreasonable that it should shock the conscience of the Court. A careful perusal of the impugned award reveals that this Court is unable to persuade itself to hold that impugned award falls in this category and much less does it fall in this category vitiating impugned award. It does not have the impugned award liable to be set aside under Section 34 of A & C Act.

46. While applying the aforesaid test on the basis of the arguments that were made, the submissions made by learned counsel for respondent that each of the issues have been elaborately considered and the specific submission that the three fold arguments do not qualify under Section 34 of A & C Act have also been noticed.

47. However, while applying the test, this Court has reminded itself of the judgment of Hon'ble Supreme Court judgment in ***Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited*** reported in **(2009) 17 SCC 796**

48. Fiza Developers principle is to the effect that petitions under Section 34 of A & C Are are one issue summary procedures. To be noted, subsequently, Fiza Developers was explained by the Hon'ble Supreme Court in ***Emkay Global Financial Services Ltd. v. Girdhar Sondhi*** reported in **(2018) 9 SCC 49**.

49. Fiza Developers principle, which in effect means that Section 34 procedures are one issue summary procedures as explained by the Hon'ble Supreme Court in ***Emkay Global Financial Services Ltd. v. Girdhar Sondhi*** reported in **(2018) 9 SCC 49**, would bring into sharp focus the principle that in hearing a petition under Section 34 of A & C Act, a detailed enquiry for scrutiny on merits of the matter is clearly impermissible. Re-appreciation of evidence is not merely impermissible but plainly forbidden perversity being the lone exception. To put it differently, this Court tested the impugned award made by AT within the contours and confines of Section 34 of A & C Act.

50. In the light of the narrative supra, inevitable conclusion is that the

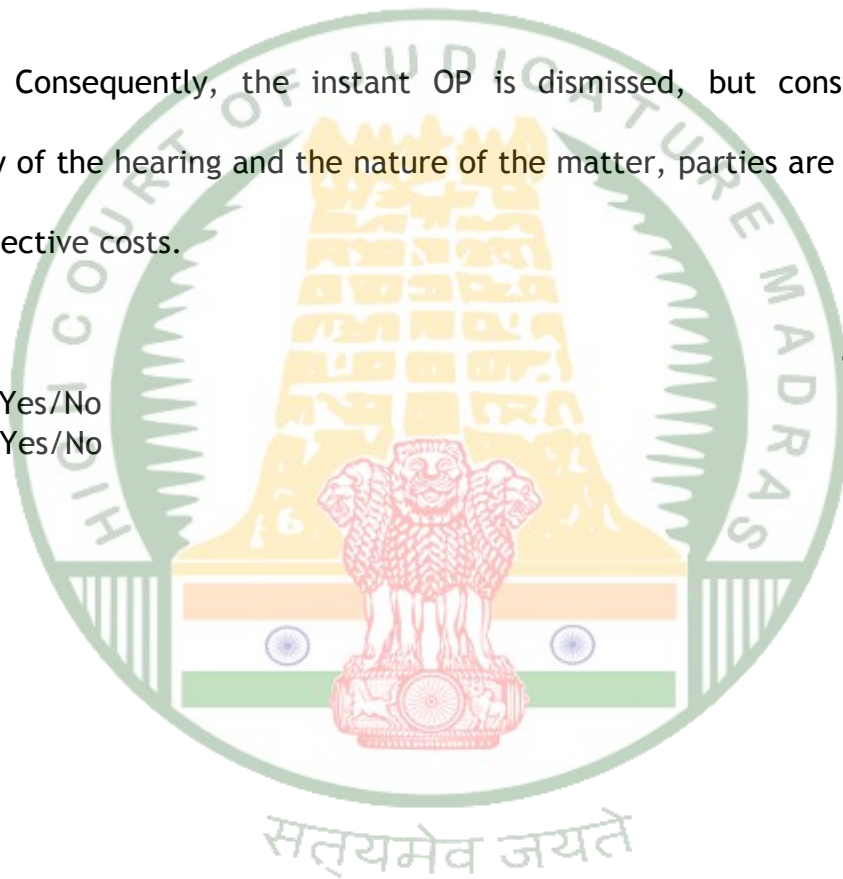
petitioner has not made out a case for judicial intervention qua impugned award of AT much less judicial intervention within the contours and confines of Section 34 of A & C Act and therefore, the instant OP fails.

51. Consequently, the instant OP is dismissed, but considering the trajectory of the hearing and the nature of the matter, parties are left to bear their respective costs.

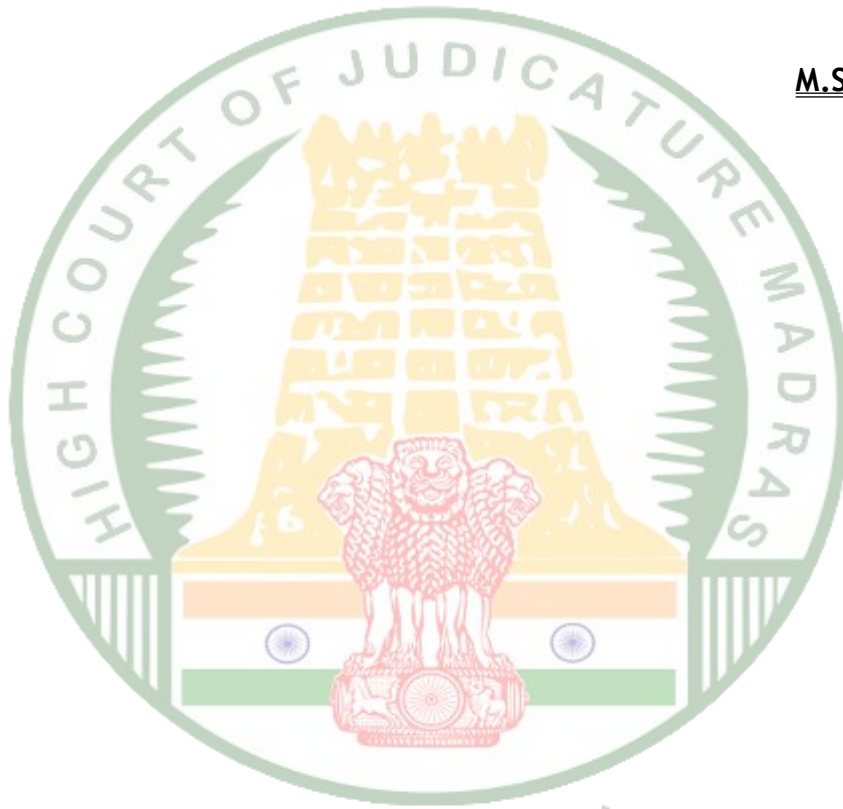
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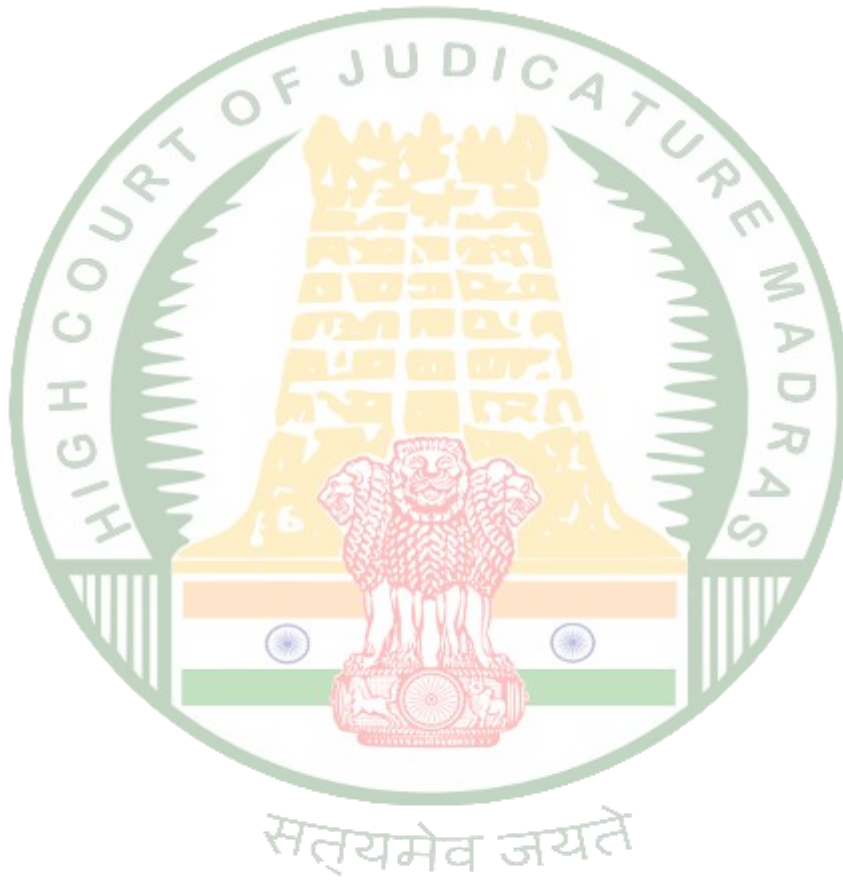
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