

O.P.221 of 2020 and

A.No.964 of 2020

N.SATHISH KUMAR, J.

This matter is listed today under the caption for 'being mentioned' at the instance of the learned counsel for the applicant.

2. The main contention of the learned counsel for the applicant is that in this matter award has not been passed and only an interim Order has been passed. Whereas, the Order indicate as if the award has been passed. Therefore, the same has to be clarified.

3. It is to be noted that on the same day when this matter has been listed on 15.07.2020, this Court taking note of the fact that there are infirmities in the proceedings and after verifying has passed one Order in Item Nos. 69 and 80 to 95 another Order in item nos.70 to 79. While drafting, it appears that the Order passed in item Nos.70 to 79 has been typed in item Nos.69 and 80 to 95 and the Order passed in item Nos.69 and 80 to 95 has been typed in item Nos.70 to 79 and the same mistake has crept in the connected batch listed on 29.07.2020.

3. In view of the same the Order of this Court in O.P.No.221 of 2020 and A.No.964 of 2020, dated 29.07.2020 shall be read as follows :

“When the matter is taken up today, the learned counsel appearing for the first respondent company has fairly submitted that as the Court had pointed out various infirmities in the arbitral award passed by the arbitrator in other matters and as the very same arbitrator had dealt many number of cases of the first respondent company, they have no objection for appointing fresh arbitrator in these matters Mr.M.S.Sampath, has been suggested to enter upon the reference in this matter.

2. The learned counsel appearing for both sides have no objection for going for appointment of a fresh arbitrator, viz., Mr.M.S.Sampath.

3. In view of the fact that as the arbitrator had dealt with many number of cases of the first respondent, as agreed by both sides, Mr.M.S.Sampath, Advocate, residing at No.33, Baskaran Street, Kodambakkam, Chennai 600 024, Mobile No.9841159996, is appointed as an arbitrator to enter upon the

reference. The learned arbitrator shall disclose disclosure statement as mandated under law and conduct the proceedings after giving opportunity to both sides and complete the proceedings, within a period of six months from the date of receipt of copy of this order. The learned Arbitrator is at liberty to fix the remuneration and the same shall be borne by the respondent and other incidental expenses, shall be borne by the parties equally. Same shall be included in the costs.

4. In the Original Petition, this Court directed that the cost to be borne only by the respondent.

5. It is the contention of the respondent that the cost to be borne by both the parties. Be that as it may.

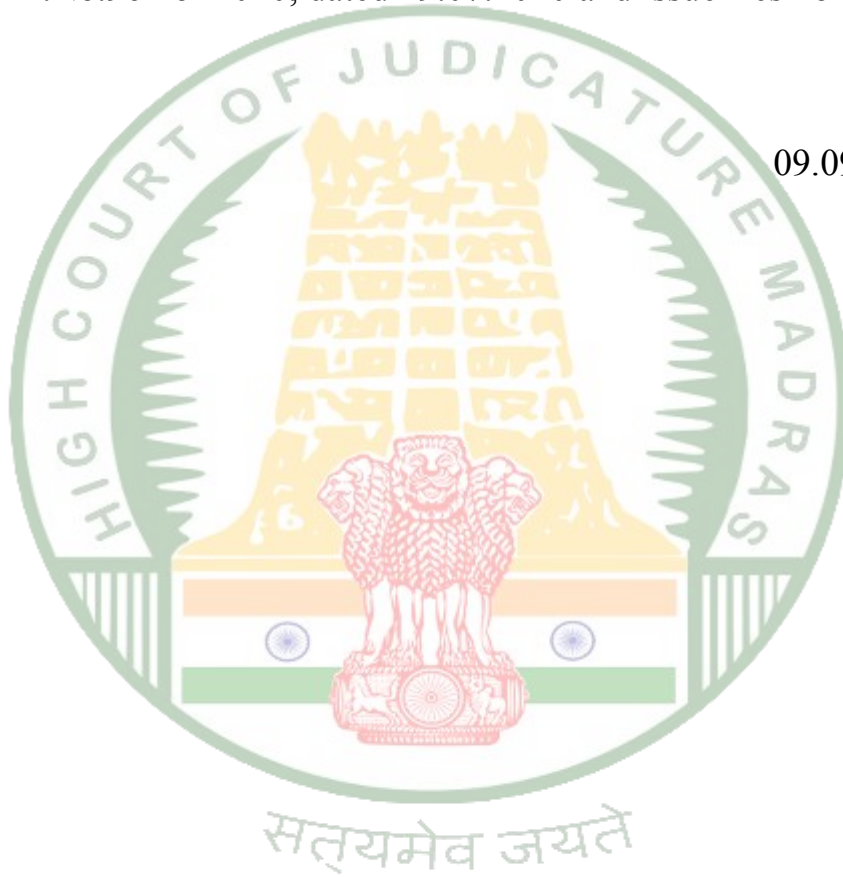
6. This Court after considering various infirmities and manipulation of records on the part of the respondent, such Order came to be passed. Therefore, the order as to cost need not be recalled. At any event, if the applicant succeeds in the arbitration, the cost borne by them shall be included.

7. Accordingly, the Original Petition is disposed of and the connected application is closed.”

4. The registry is directed to incorporate the above Order in O.P.No.221 of 2020 and A.No.964 of 2020, dated 29.07.2020 and issue fresh order copy to the parties.

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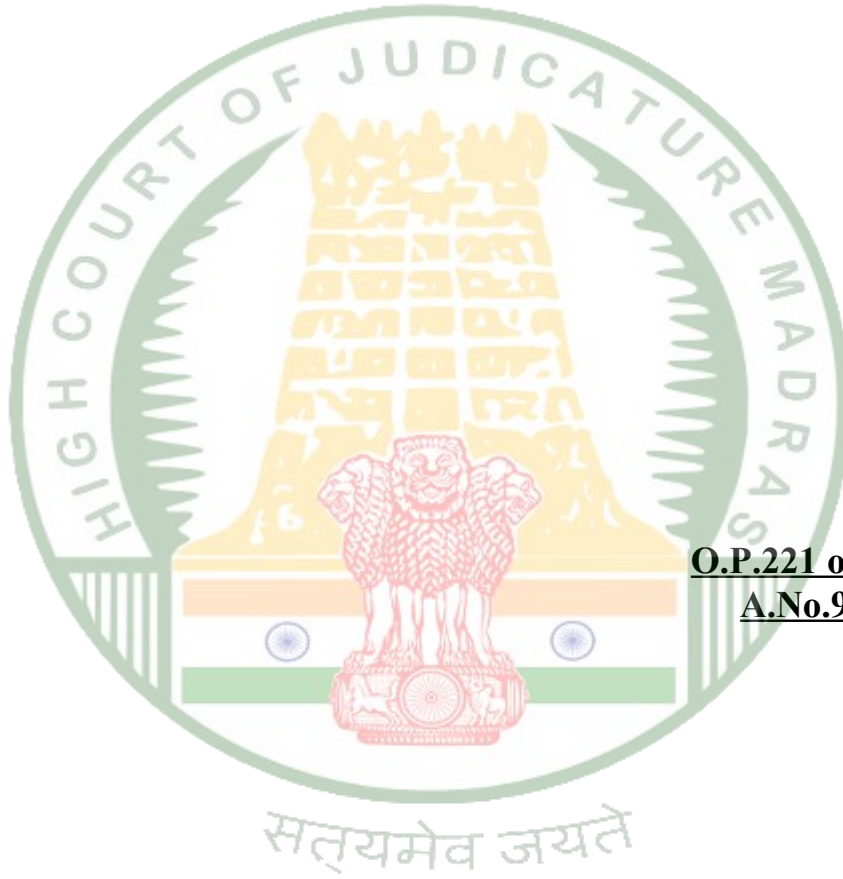
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N.SATHISH KUMAR, J.

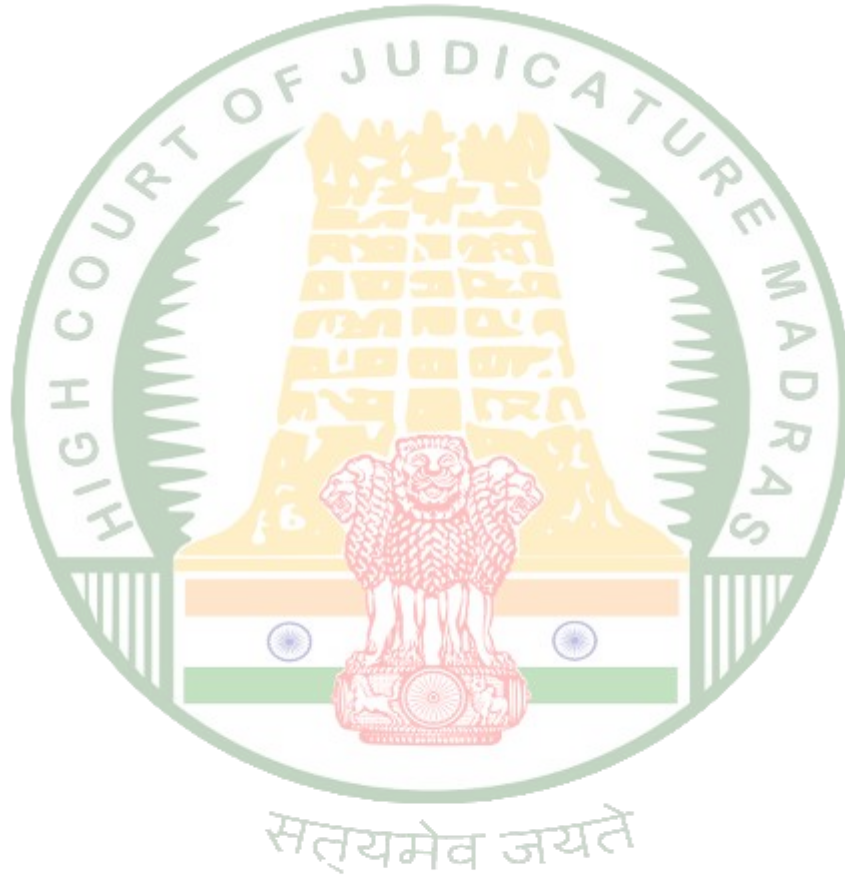
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A.No.964 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29.07.2020**

CORAM

THE HONOURABLE MR. JUSTICE **N. SATHISH KUMAR**

O.P.221 of 2020 and
A.No.964 of 2020

Flywheel Loistics Solutions Pvt Ltd.
Rep. by its Authorized representative
F-221/E-1, Old M.B.Road,
Lado Sarai, New Delhi - 110030

... Petitioner

Vs.

1. Hinduja Leyland Finance Ltd.,
Represented by its Authorized Representative,
having its registered office at
No.1, Sardar patel Road,
Guindy, Chennai 600 032.

2. Mr.S.Samuel (Sole Arbitrator),
Office at No.7/2, Kondichetty Street,
1st Floor, Room No.116, Parrys,
Chennai 600 001.

3. Meenakshi Syal,
d/o Shri Amar Singh,
No.117, First Floor, Uday Park,
New Delhi 110049

... Respondents

Prayer: Petition filed under Section 14(2) of the Arbitration and Conciliation Act, 1996 to terminate the mandate of the arbitrator assumed

under notice of reference dated 14.11.2019 and substitute an independent arbitrator to adjudicate upon the disputes between the petitioner and the respondent arising out of the Arbitration Agreement bearing No.DHDLSG00524 dated 30.09.2017.

For Petitioner : Mr.Karthik Subramanian
for Mr.Abishek Jebaraj
For Respondents : Mr.V.Balasubramani

ORDER

When the matter is taken up today, the learned counsel appearing for the first respondent company has fairly submitted that as the Court had pointed out various infirmities in the arbitral award passed by the arbitrator, they have no objection for appointing fresh arbitrator in this matter and has suggested a practising advocate Mr.Sampath to enter upon the reference.

2. The learned counsel for the petitioner has no objection for going for fresh arbitrator, viz., Mr.M.S.Sampath.

3. In view of the fact that despite the interim Order passed by this Court, award has been hurriedly passed, without any appropriate proceedings and that itself clearly indicate that the award is a result of bias. In such view of the matter as the award has been passed during the pendency of the proceedings challenging the proceedings itself, the award is set aside. As agreed by both sides, Mr.M.S.Sampath, Advocate, residing at No.33, Baskaran

Street, Kodambakkam, Chennai 600 024, Mobile No.9841159996, is appointed as an arbitrator to enter upon the reference. The learned arbitrator shall disclose disclosure statement as mandated under law and conduct the proceedings after giving opportunity to both sides and complete the proceedings, within a period of six months from the date of receipt of copy of this order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the respondent.

4. Accordingly, the Original Petition is disposed of and the connected application is closed.

29.07.2020

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Index : Yes / No

Internet : Yes

Speaking Order/Non-Speaking Order.

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