

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.NO.1074 OF 2020

AND

C.M.P.NO.6830 OF 2020

1. Sri Thenandal Films,
Rep.by its Sole Proprietor,
N.Ramasamy, Old No.19, New No.14,
Saraswathi Street, Mahalingapuram,
Nungambakkam, Chennai - 600 034.

2. N.Ramasamy

3. R.Hemarukumani

... Appellants/
Respondents/Respondents

versus

Tan Sri Dato Sri Ramasamy,
Rep. by Power of Attorney,
Cleatus Fredrick Henry,
No.15, 5th Cross Street,
Lake Area, Nungambakkam,
Chennai - 600 034.

...Respondent/Applicant/
Claimant

Prayer: Appeal filed under Order 37(2) of the Arbitration and Conciliation Act, 1996, to set aside the order dated 05.11.2019 in I.A.No.1 of 2019 in A.F.No.214 of 2019 passed by the Sole Arbitrator.

For Appellants

: Mr.S.Karthikei Balan

For Respondent

: Mr.Dhanaram Ramachandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the order passed by the Sole Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996.

2. The main ground of the challenge of the order is that the respondent had unilaterally appointed the arbitrator, besides that, the arbitrator has not given a declaration. Further, no notice was served for the date of hearing and an ex parte order has been passed without giving any opportunity to the parties.

3. Heard the learned counsels on both sides and also perused the original records available with the Madras High Court Arbitration Centre.

4. On perusal of records, found that though the notice was sent by the arbitrator in the first letter dated 09.10.2019, fixing the hearing dates on 16.10.2019, 23.10.2019 and 25.10.2019, but the declaration given by the arbitrator on 19.10.2019 stating that his appointment as arbitrator is not barred by Schedule V of the Arbitration and Conciliation Act. Therefore, this Court finds that such declaration given by the arbitrator cannot be valid in the eye of law.

5. Further, the appointment of arbitrator was objected by the respondent, by its letter dated 31.10.2019 indicating the unilateral appointment is against law. The appellants have also alleged that the arbitrator has abused and threatened them. The allegations were repudiated by the arbitrator by sending reply e-mail and the nature of reply sent by the arbitrator clearly indicates that he continuing as Arbitrator would lead to bias in the proceedings.

6. Taking note of the nature of claim and the dispute arose between the parties and the objections raised, this Court is of the view that an experienced person, who deals with the issue be the best person to resolve the issue.

7. Accordingly, it is ordered as follows:

i) Hon'ble Mr. Justice K. Venkataraman, Former Judge, High Court of Madras, residing at L-Block, No.125, East Anna Nagar, Chennai - 600 102, Contact No. 94443 90961, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. Both sides also consented to have Learned Arbitrator to resolve the issues.

ii) The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator shall disclose the particulars as required in the Arbitration and Conciliation Act.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

8. It is also made clear that till the learned arbitrator enter reference, the appellants shall file a Claim Petition before the learned Arbitrator within a period of two months from the date of receipt of copy of this order. On such Claim Petition being filed, the learned Arbitrator shall resolve the issue within a period of six(6) months thereafter.

9. At this stage, the learned counsel for the appellants submitted that the property has already been attached by various orders of this Court but however he has not filed any proof.

10. Till the Claim Petition being filed before the learned arbitrator, the appellants herein are restrained from alienating, encumbering, mortgaging or in any manner creating charge over 1/3rd of the scheduled mentioned property until disposal of the arbitration proceedings. Thereafter, it is open to the appellants to move the application before the learned Arbitrator for further orders under Section 17 of the Arbitration and Conciliation Act.

11. With the above observations, this Civil Miscellaneous Appeal is allowed. Consequently, connected Civil Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sri

To

The Hon'ble Mr.Justice K.Venkataraman,
Former Judge, High Court of Madras,
L-Block, No.125, East Anna Nagar,
Chennai - 600 102.

Copy To

1. Arbitration Centre, Madras High Court.
2. The Section Officer,
VR Section, High Court, Madras-104.

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NR(CO)
CS/01/10/2020