

Prothonotary and Senior Master had granted four weeks time to comply with all office objections but thereafter the respondent did not receive any information about the matter and he therefore unable to appear on 13th September, 2019. He submits that the appointment of the Arbitrator was not in accordance with the agreed procedure specified in the Arbitration Agreement. According to him, under clause 14 of the agreement, the disputes and differences, if any, should have been mutually discussed and only if it was not resolved within 45 days of dispute, a formal notice was to be issued. For this reason, he submitted that the reference is improper and therefore the order passed by this court appointing the Sole Arbitrator be set aside.

3. Mr. Shah on behalf of the respondent-original applicant, opposes the application. He submits that the applicant in this Motion was represented before the court had also entered appearance before the order could be passed. He therefore submits that there is no occasion to allow the Motion. It is pointed out that the present Motion is filed on behalf of the original respondent no.3 in Arbitration Application who is the Managing Director of the respondent no.1 in the Arbitration Application. The arbitral reference pertains to disputed as between the original petitioner

and the original respondent no.1. Respondent no.3 is not a party in the arbitration. Faced with this, Mr. Anilkumar states that description of the applicant appears erroneous. In my view, there is no error that has been made. It is quite clear that it respondent no.3 who is the applicant. The Notice of Motion is signed by the Advocate on behalf of the applicant who is respondent no.3. The affidavit in support is also filed on behalf of respondent no.3 in his capacity as a Managing Director but not on behalf of respondent no.1. Although the applicant seeks to set aside the order on the basis that the respondents did not receive information about the matter being listed, that statement is incorrect since the record of the court indicates that the matter was first listed before the Court on 27th March, 2019 when the counsel for the applicant sought time to enable the Advocates for the applicant to serve the respondents. On application of the applicant's Advocate, the matter was adjourned to 3rd April, 2019. The 2nd paragraph of that order records that despite of service of notice, if on the adjourned date of hearing, these respondents are not represented, the court shall proceed to pass appropriate orders.

4. On 3rd April, 2019, the matter could not be taken up for paucity

of time and it was adjourned to 24th April, 2019. The matter did not appear on 24th April, 2019 but appeared on board on 26th April, 2019. On 26th April, 2019, the learned counsel for the respondent no.3 appeared. He sought time since the proceedings were apparently not served on the respondent no.3. Order dated 26th April, 2019 also records that a copy of the “paper book” had been handed over on that date through the counsel for respondent no.3. The court directed the respondents to file a reply before the adjourned date and stood over the matter to 12th June, 2019. Thus, from 26th April to 12th June, 2019 the respondent no.3 had sufficient time to file a reply even assuming that he was appearing on behalf of the respondent no.1 as well since he claims to be the Managing Director of the respondent no.1. No reply was filed.

5. The matter thereafter came up on 13th September, 2019 when the Court after hearing submissions of the parties passed the order appointing the Sole Arbitrator. Thus, the contentions of the applicant in the Notice of Motion are clearly dishonest and in my view suppresses vital information that the respondent no.3 had himself through his Advocate sought time to file a reply on 26th April, 2019. The order came to be passed on 13th September,

2019. The application is thus entirely misconceived and deserves to be dismissed.

6. I accordingly pass the following order;

(i) Notice of Motion is dismissed.

(ii) Applicant to pay costs of Rs.20,000/- to the respondent within a period of two weeks from today.

(iii) Notice of Motion is disposed in the above terms.

(A. K. MENON, J.)