

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.2770 of 2011  
and  
CMP No.6336 of 2020

C. Ramaradjou ...Appellant

vs.

M/s Padhmam Herbal Care P Ltd.,  
Puducherry  
Represented by its Managing Director ... Respondent

Civil Miscellaneous Appeal filed under Section 37 of Arbitration and Conciliation Act, 1996, to set aside the fair and decreetal order dated 21.01.2009 made in A.O.P. No.47 of 2006 on the file of Principal District Judge, Pudhucherry.

For Appellant : Mr. Ashokapathy  
for M/s.Pass Associates  
For Respondent : Served - No Appearance

**JUDGMENT**

*(This case was heard through Video Conferencing)*

This appeal has been filed under Section 37 of the Arbitration and Conciliation Act challenging the order dated 21.01.2009 passed by the learned Principal District Judge, Pondicherry in AOP No.47 of 2006 filed by the appellant under Section 34 of the Arbitration and Conciliation Act, challenging the order dated 23.06.2006 passed by the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act.

**Brief facts leading to the filing of this appeal under Section 37 of the Arbitration and Conciliation Act :**

2. The appellant is the respondent in the Arbitration before the Arbitral Tribunal comprising of the Sole Arbitrator and the respondent is the claimant. There seems to be some disputes pertaining to a construction contract wherein there is an Arbitration clause.

3. The respondent / claimant has referred the dispute to Arbitration and a Sole Arbitrator was appointed, who had acted upon the reference. The appellant / respondent has questioned the jurisdiction of the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act alleging that the Sole Arbitrator is an interested party to the dispute and

therefore, he cannot act as an Arbitrator for adjudicating the disputes between the parties.

4. By order dated 23.06.2006 in an application filed by the appellant / respondent under Section 16 of the Arbitration and Conciliation Act questioning the jurisdiction of the Arbitral Tribunal, the Sole Arbitrator passed the following order :

- 1. The Arbitrator has got absolute jurisdiction to adjudicate the disputes under reference.*
- 2. The arbitrator has got competency to adjudicate the disputes*
- 3. The arbitrator declares that there exists a valid agreement dated 27-2-2002 between the parties and this agreement contains an arbitration clause.*
- 4. The appointment of the arbitrator by the company is in accordance with the conditions of the agreement and the Arbitration Act 1996.*
- 5. As the sole arbitrator has been appointed by the party in consonance with the conditions of agreement he has jurisdiction to decide all matters contemplated in Section 16.*
- 6. Once the matter reaches the arbitral Tribunal or the sole arbitrator the parties could approach the courts only in terms of Section 37 or in terms of Section 34 of the Act.*
- 7. Therefore, the preliminary issues are decided accordingly and ordered thus as stated above.*
- 8. The parties should come up ready to cooperate with the arbitrator for the*

*adjudication of claims from the next sitting onwards and to be held on 15-7-2006.*

5. Aggrieved by the same, the appellant has filed an application under Section 34 of the Arbitration and Conciliation Act before the learned Principal District Judge, Pondicherry in AOP No.47 of 2006. The learned Principal District Judge, Pondicherry under the impugned order dated 21.01.2009 passed in AOP No.47 of 2006 dismissed the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act.

6. Aggrieved by the same, the present appeal has been filed under Section 37 of the Arbitration and Conciliation Act.

7. Section 37 of the Arbitration and Conciliation Act reads as follows :-

37. Appealable orders.—

(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

- (a) refusing to refer the parties to arbitration under section 8;
- (b) granting or refusing to grant any measure under section 9;
- (c) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.

- (a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

8. Only in the aforementioned circumstances, an appeal can be filed. In the case on hand, an order has been passed by the sole Arbitrator under Section 16 of the Arbitration and Conciliation Act, rejecting the contention of the appellant that the Arbitral Tribunal does not have jurisdiction to hear the dispute as according to him the Sole Arbitrator is an interested party to the Arbitration. The said order was passed by the Sole Arbitrator on 23.06.2006. Instead of filing the statutory appeal under Section 37 as against the said order, the appellant has wrongly approached the learned Principal District Judge, Pondicherry in AOP No.47 of 2006 under Section 34 of the Arbitration and Conciliation Act, when admittedly, no Arbitral Award has been passed and the impugned order is only an order passed under Section 16 of the Arbitration and Conciliation Act. Thereafter, the learned Principal District Judge has also dismissed the application filed under Section 34 of the Arbitration and Conciliation Act, though not on the ground that the said application is not maintainable but on the ground that the order which is the subject matter of the challenge cannot be entertained as the appellant has not made out a case for interference as laid down under the provisions of Section 34 of the Arbitration and

Conciliation Act. Thereafter, aggrieved by the said order, the present appeal has been filed under Section 37 of the Arbitration and Conciliation Act.

9. This Court is of the considered view that the appellant having not filed a statutory appeal under Section 37 of the Arbitration and Conciliation Act, aggrieved by the order dated 23.06.2006 passed by the Arbitral Tribunal by which, the application filed by the appellant under Section 16 of the Arbitration and Conciliation Act, questioning the jurisdiction of the Arbitral Tribunal was rejected, the present appeal is not maintainable in view of the fact that the appellant had chosen to file an application under Section 34 of the Arbitration and Conciliation Act and only thereafter has filed the present appeal under Section 37 of the Arbitration and Conciliation Act.

10. It is also brought to the notice of this Court that subsequent to the passing of the order dated 23.06.2006 passed by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, which was the subject matter of the challenge under Section 34 of the Arbitration and Conciliation Act before the learned Principal District

Judge, Pondicherry in AOP No.47 of 2006, the Arbitral Tribunal has passed a final award against the appellant. This being the case, this Court is of the considered view that since the present appeal which has been filed as against the order passed under Section 34 of the Arbitration and Conciliation Act is not maintainable in view of the fact that the Section 34 application filed by the appellant aggrieved by the order dated 23.06.2006 passed under Section 16 of the Arbitration and Conciliation Act is also not maintainable, liberty will have to be granted to the appellant to raise the question of jurisdiction of the Arbitral Tribunal to decide the dispute between the parties in the application filed under Section 34 of the Arbitration and Conciliation Act, if at all pending since the appellant has been consistently raising such a plea ever since the receipt of the notice in the arbitration proceedings. Just because, the appellant has not exercised his legal options as against the order dated 23.06.2006 passed by the Arbitral Tribunal in a proper way, the appellant should not be left remediless.

11. In the result, this Court is of the considered view that the present appeal filed by the appellant is not maintainable as no arbitral award is the subject matter of challenge in this appeal and the subject

matter of challenge is only an order dated 23.06.2006 passed by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, which was not challenged earlier as per the procedure contemplated under the Act. The present appeal which has challenged the order dated 23.06.2006 passed under Section 16 of the Arbitration and Conciliation will not fall within the purview of Section 37 of the Arbitration and Conciliation Act as the appellant has instead of challenging the very same order by filing an appeal has chosen to file an application under Section 34 of the Arbitration and Conciliation Act before the learned Principal District Judge, even without there being an Arbitral Award, which is not maintainable.

12. For the foregoing reasons, this Civil Miscellaneous Appeal is dismissed. However, liberty is granted to the appellant to raise the question of jurisdiction of the Arbitral Tribunal to decide the dispute between the parties on merits in the application filed under Section 34 of the Arbitration and Conciliation Act, if it is pending before any competent Court. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

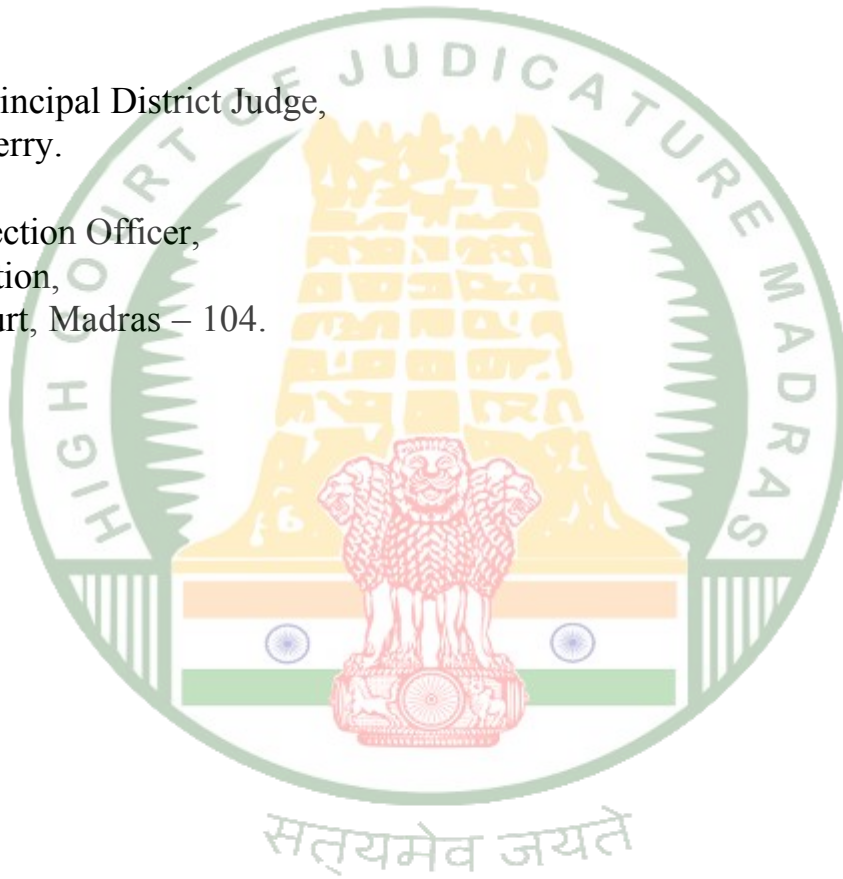
Internet: Yes/No

Speaking Order/Non-Speaking Order

To

1. The Principal District Judge,  
Pudhucherry.

2. The Section Officer,  
V.R. Section,  
High Court, Madras – 104.

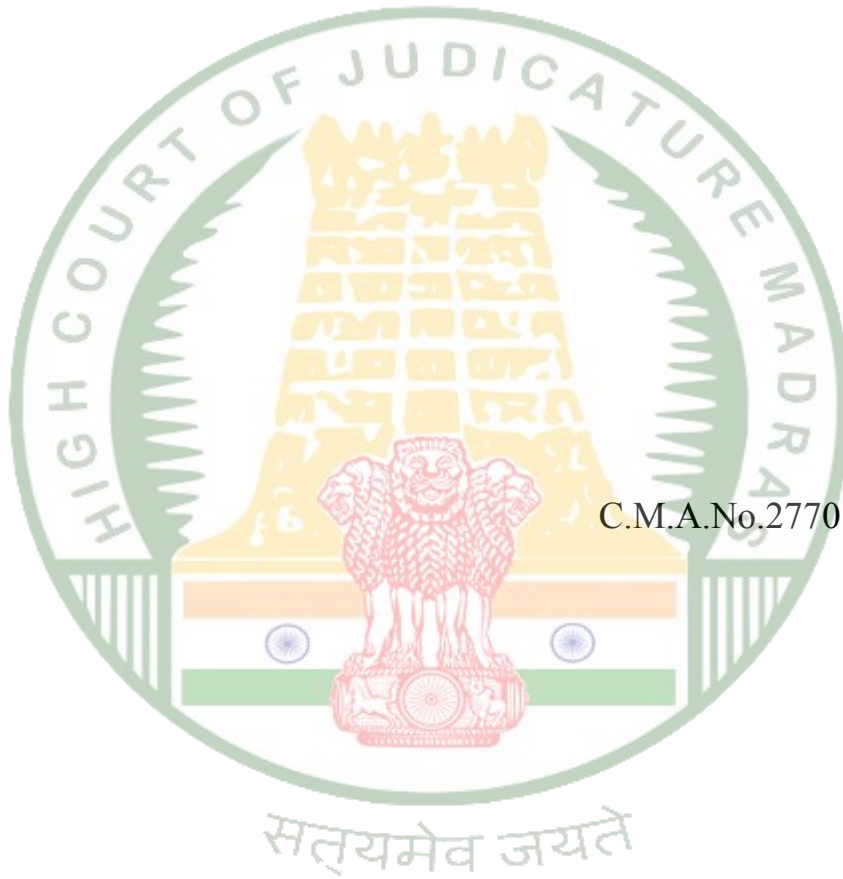


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**ABDUL QUDDHOSE, J.**

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