



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 22ND DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.91 of 2018

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of dispute between
Mrs.Champakam Muralidhar and
Mr.Naveen Kumar in Arbitration
Case No.ARB/NK/M/06 of 2015,
award dated 25.03.2017.

Mrs. Champakam Muralidhar,
W/o. Late V.Muralidhar,
No.47, St. George Cathedral Road,
Chennai - 600 086.

... Petitioner

..Vs..

Mr.Naveen Kumar,
No.22, Kennet Lane,
Egmore, Chennai - 600 008.

... Respondent

Original Petition praying that this Hon'ble Court be pleased to
set-aside the impugned award, dated 25.03.2017 made in ARB/NK/M/06 of
2015.



WEB COPY This Original Petition coming on this day before this court for hearing in the presence of Mr.V.Raghavachari for Mr.R.Munuswamy, advocates for the Petitioner herein and Ms.Tanushree Arvind for Mr.R.Parthasarathy, advocates for the Respondent herein and upon reading the petition and the award dated 25.03.2017 and for the Counter Affidavit of Mr.Naveen Kumar filed herein, and this court having observed that there is element of bias in the decision made by the Arbitrator, besides the proceedings have not been communicated. In such view of the matter, the award is liable to be interfered with under Section 34(2)(iii) of the Arbitration and Conciliation Act.

it is ordered as follows:-

That the Hon'ble Mr. Justice N.Kirubakaran, [Retd.] residing at NB 2, Greenways Road, Raja Annamalaipuram, Chennai – 600 028 (Mobile No. – 9445025454) be and is hereby appointed as an Arbitrator to enter upon reference and adjudicate the disputes inter se the parties.

2) That the learned Arbitrator appointed herein shall, 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.



3) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

4) That both parties hereto shall bear their own costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
22ND DAY OF SEPTEMBER 2021.

Sd/-
ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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ED

29.09.2021

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O.P.No.91 of 2018

ORDER

DATED: 22.09.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 30.09.2021

APPROVED ON : 04.10.2021

Copy to:

The Honourable Mr.Justice
N.Kirubakaran, Judge [Retd.],
High Court Madras,
Arbitrator,
residing at NB 2, Greenways Road,
Raja Annamalai Puram,
Chennai – 600 028,
Mobile 94450 25454 .

(With covering Letter)



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.91 of 2018

Mrs. Champakam Muralidhar,
W/o. Late V.Muralidhar
No.47, St. George Cathedral Road,
Chennai-600 086.

... Petitioner

..Vs..

Mr.Naveen Kumar,
No.22, Kennet Lane,
Egmore, Chennai-600 008.

... Respondent

PRAYER : Original Petition filed under Section 34 of Arbitration and Conciliation Act, 1996, to set aside the the impugned award dated 25.03.2017 made in ARB/NK/M/06 of 2015.

For Petitioner : Mr. V.Raghavachari, for
Mr.R.Munuswamy

For Respondent : Mr.Tanushree Arvind for
Mr. R.Parthasarathy



WEB COPY

ORDER

(This case has been heard through video conference)

The challenge has been made against the award passed by the Arbitrator dated 25.03.2017 directing the respondent to pay a sum of Rs.60,00,000/- (Rupees sixty lakhs only).

2. The dispute said to have been referred to the Sole Arbitrator by the claimant with regard to the loan agreement dated 15.03.2012 said to have been executed between the parties. As the respondent has committed default, the matter has been referred to arbitration and the Arbitrator was appointed and after considering the materials, the learned Arbitrator had passed the award.

3. Though several grounds made in this petition, the main contention of the petitioner is that the award cannot be sustained in the eye of law for want of declaration by the Arbitrator and in fact, earlier, some other Arbitrator was appointed by the claimant, who is none other than friend of one Suresh Kumar D. Kochar, who had made an attempt to take over the property of the respondent. It is his contention that previous Arbitrator has recused himself, since he has already appeared as counsel for one of the



parties. Thereafter, a notice of invocation said to have been issued by the present Arbitrator on 15.04.2015, which was objected by the claimant indicating that he is also close friend of Suresh Kumar D.Kochar. Despite such objection is made, the learned Arbitrator has issued notice for his appointment without making any mandatory disclosure as contemplated under Section 12 of the Act. Besides, the respondent has also filed an objection under Section 16 of Arbitration and Conciliation Act and sends the same to the Arbitrator by registered post. However, the learned Arbitrator without considering any of the materials, had passed the award that too passing an order under Section 16 of the Arbitration and Conciliation Act.

3. The learned counsel appearing for respondent/claimant would submit that the learned Arbitrator has considered the counter filed by the respondent on merits including the objections raised under Section 16 of the Act. The respondent having received notice from the learned Arbitrator, failed to appear before the Arbitrator for many hearings and finally, the Arbitrator has no other go to consider and pass orders on merit.

4. Heard the submissions of learned counsel appearing for petitioner and the respondent and perused the records.



5. Perused the award. Though the award indicates that several opportunities have been given, it is to be noted that the Arbitrator has issued notice dated 15.04.2015 indicating the first sitting on 25.04.2015 to the respondent. Whereas, the learned counsel appearing for respondent also by letter dated 5th May 2015 intimated to the claimant about the further hearing and also stated that the further claim petition has been filed before the Arbitrator. It is to be noted that the learned Arbitrator has not issued any proceedings for the hearing notice, whereas the respondent's counsel issued a notice. It is also to be noted that while intimating his appointment, the Arbitrator has not even made mandatory disclosure as required under Section 12 (1) and 12(5) of the Act. Despite the fact that serious objections raised by the respondent/claimant, making allegations that the Arbitrator has close proximity with the party and the previous Arbitrator. When the allegation of bias in the nature of proximity has been raised, the Arbitrator ought to have made mandatory disclosure as required under Section 12(1) and 12(5) of the Act and it has not been done so in this case. Be that as it may. The very proceedings of Arbitrator clearly indicates that though several adjournments said to have been granted, none of the proceedings have been communicated to the parties as required under Section 24(2) of the Act, which is also conflicting the very proceedings of the Act. When the serious allegations are made that the mandatory disclosure has not been



made and the proceedings has not been communicated, the contention of the respondent that Arbitrator has close proximity with the parties and the claimant also probablised by the finding of the Arbitrator. In fact, the Arbitrator has referred the counter filed by the respondent said to have been filed earlier before the previous Arbitrator. How that counter came on record before the present Arbitrator is a question mark. Without a close proximity or connection either with the previous Arbitrator or with the party, the counter filed earlier would not have come on record. It would also clearly indicates from the contention of the respondent that the Arbitrator biased and has close proximity with the party. In such view of the matter, this Court is of the view that there is element of bias in the decision made by the Arbitrator, besides the proceedings have not been communicated. In such view of the matter, the award is liable to be interfered with under Section 34(2)(iii) of the Arbitration and Conciliation Act.

6. At this stage, both sides fairly conceded to have arbitration by the retired Judge of this Court. Accordingly, this Court appoints Hon'ble Mr. Justice N.Kirubakaran, residing at NB 2, Greenways Road, Raja Annamalaipuram, Chennai-600 028, Contact No. 94450 25454 as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.



7. The learned Arbitrator appointed herein, shall 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.

8. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

9. This Original Petition is ordered accordingly, leaving the parties to bear their own costs.

Sd./-N.S.K.J.,
22.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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