

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2021

DATE OF DECISION : 01.04.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

O.P.Nos.868 and 869 of 2016

1.M/s.Learning Leadership Foundation,
No.9, GST Road,
St. Thomas Mount,
Chennai-600 016.

2.The PSBB Millennium School,
No.476, Multi Nagar Main Road,
Gerugambakkam,
Chennai-601 202.

.. Petitioners in
both O.Ps.

Vs.

M/s.S.S.School Transports Pvt. Ltd.,
Plot No.110, New No.14, II Floor,
Sai Nagar, I Main Road, 5th Street,
Virugambakkam,
Chennai-92.

.. Respondent in
O.P.No.868 of 2016

M/s.Star Transwell Services Pvt. Ltd.,
Plot No.110, New No.14, II Floor,
Sai Nagar, I Main Road, 5th Street,
Virugambakkam,
Chennai-600 092.

.. Respondent in

These original petitions are filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the award dated 20.06.2016 passed by the learned Arbitrator and consequently allow the counter claim and pass such further order or orders as this Hon'ble Court deem fit to the circumstances of the case and thus render justice.

For Petitioners : Mr.Abhijeet Sinha
in O.P.No.868 of 2016
Mr.Thriyambak J. Kannan
in O.P.No.869 of 2016
For Respondent : Mr.V.Radhakrishnan, Senior Counsel
for Mr.T.V.Lakshmanan
in O.P.No.868 of 2016 and
Mr.K.Raja in O.P.No.869 of 2016

COMMON ORDER

This common order will govern captioned two 'Original Petitions' (hereinafter 'O.Ps' in plural and 'O.P' in singular for the sake of brevity and convenience). 'O.P.No.868 of 2016' shall be referred to as 'senior OP' and 'O.P.No.869 of 2016' shall be referred to as 'junior OP' for the sake

of convenience and clarity.

2 Captioned O.Ps are applications under section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, convenience and clarity. Captioned O.Ps have been filed assailing two separate arbitral awards both dated 20.06.2016 ('impugned awards' in plural and 'impugned award' in singular for the sake of convenience) made by the same sole arbitrator, who constituted the 'Arbitral Tribunal' which shall hereinafter be referred to as 'AT' for the sake of brevity and convenience. 'Impugned award in senior OP' shall be referred to as 'first impugned award' and the 'impugned award in junior OP' shall be referred to as 'second impugned award' for the sake of convenience and clarity.

3 There are two petitioners in each of the captioned O.Ps and both the petitioners are same in both O.Ps, whereas sole respondent in senior and junior O.Ps is different. The lone respondent in the senior OP is one 'S.S. School Transports Pvt. Ltd.' ('SSL' for the sake of brevity) and the sole respondent in the junior OP is another company which goes by the name 'Star Transwell Services Pvt. Ltd.' ('Star' for the sake of

brevity). Two petitioners in each of the captioned O.Ps shall be collectively referred to as 'said school' for the sake of convenience and clarity.

4 There are two separate agreements both dated 14.10.2011 for providing transport services to students and employees of said school. The aforesaid two separate agreements shall hereinafter be referred to as 'said contracts' in plural and 'said contract' in singular for the sake of brevity and clarity. While one said contract is between said school and Star, the other contract is with SSL. Said contract in which SSL is a party is subject matter of senior OP and the same shall be referred to as 'first said contract'. The said contract to which Star is a party is the subject matter of junior OP and the same shall be referred to as 'second said contract' wherever particular reference is to be made.

5 Majority of the facts and core lis is common. Therefore, captioned O.Ps were tagged and listed together. In the hearing, with the consent of all counsel appearing for parties in the two captioned O.Ps, both O.Ps were taken up together for final disposal and heard out.

6 This Court has mentioned supra that both captioned O.Ps are applications under section 34 of A and C Act. Owing to the limited legal

landscape of section 34, within which any legal drill of testing an arbitral award should perambulate, short facts shorn of elaboration will suffice. To put it differently, factual matrix in a nutshell containing essential facts imperative for appreciating this common order will suffice owing to the short statutory perimeter of section 34 of A and C Act.

7 Short facts are that said contracts are for providing transport services to students and employees of said school; that with regard to first said contract, loan was raised from ICICI Bank by said school for purchase of 10 buses with 'Equated Monthly Instalments' ('EMIs in plural and 'EMI' in singular for brevity) and the margin money for the same were deducted from the monthly invoices raised by SSL on said school; that at the end of the 5th year, the buses were to be sold and proceeds of sale were to be shared between SSL and said school in the ratio of 60:40; that maintenance, upkeep of buses and all costs of operation of buses including fuel, road tax, insurance, etc., are to be borne by SSL; that with regard to second said contract, Star will raise monthly invoices, 75% of which has to be paid by said school within 10 days from the date of submission of invoices and the balance 25% has to be settled (after scrutiny of the bill) by 15th of following month; that Star furnished an

undertaking for making payment towards Provident Fund and Employees State Insurance (PF and ESI) besides other statutory remittances as applicable; that at some point of time, issues erupted regarding particulars of statutory dues not being paid resulting in said school withholding payment and stoppage of services by Star/SSL; that said school started operating buses through third parties and arbitrable disputes arose; that there is an arbitration clause in each of the said contract is not in disputation; that this arbitration clause in each of the said contract is arbitration agreement between the parties, i.e., 'arbitration agreement' within the meaning of section 2(1)(b) read with section 7 of the A and C Act; that arbitration clause was triggered resulting in constitution of AT; that before AT, in one arbitral proceedings, SSL was the sole claimant and in other arbitral proceedings, Star was the lone claimant; that in both arbitral proceedings, petitioners in captioned O.Ps, i.e, said school stood arrayed as respondents 1 and 2; that AT entered upon reference; there was oral and documentary evidence before AT; that AT after full contest made two separate awards, i.e., impugned awards inter-alia in favour of Star/SSL; that said school has assailed impugned awards vide captioned O.Ps; that vide first impugned award, AT directed

said school to pay a sum of Rs.63,86,248/- to SSL, damages at the rate of Rs.1000/- per day per vehicle for 20 days per month for the period from 1.6.2013 to 30.09.2015 excluding intervening holidays being damages for using 24 vehicles besides ordering sale of 10 buses; that vide second impugned award, AT inter-alia directed said school to pay a sum of Rs.54,25,561/- together with 15% per annum pre award interest and 18% per annum post award interest leaving the parties to bear their respective costs.

8 To be noted, in the first impugned award, pursuant to orders made in section 9 proceedings (order dated 16.09.2013 in O.A.No.461 of 2013, which was marked as Ex.C.9 before AT), bank guarantee to the tune of Rs.64 lakhs was furnished in favour of SSL, bank guarantee was furnished and AT held that SSL is entitled to invoke this bank guarantee in partial satisfaction of first impugned award. In both impugned awards, said school was given two months time (from the date of impugned awards) to pay the award amounts. To be noted, said school had made a counter claim to the tune of Rs.1,53,60,000/- against SSL and Star for alleged utilisation of 16 buses of another company which goes by the name 'Sally Thermal Plastic India Limited' ('STPIL' for the sake of

brevity) for a specified period between June of 2010 and May of 2013 and this counter claim of said school was negated. It is also to be noted that STPIL under an earlier agreement dated 26.05.2005 (for a period of five years) was providing transport services to said school under various terms set out therein and in this regard, there was a tripartite agreement between STPIL, said school and ICICI Bank for purchase of buses. Thereafter, in 2010, SSL was formed / incorporated and another agreement dated 10.02.2010 was entered into with SSL. This agreement ran into rough weather leading to legal proceedings (O.A.No.480 of 2011 on the file of Madras High Court), but parties amicably settled the matter and fresh agreement i.e., said contracts dated 14.10.2011 came to be executed. Thereafter, as mentioned supra, arbitral disputes erupted qua said contracts also, AT was constituted which entered upon reference and made impugned awards, all of which have been captured in this narrative thus far in this order.

9 This Court having set out the factual matrix containing essential facts imperative for appreciating this common order and also having captured the trajectory the matter has taken in reaching this court vide captioned O.Ps, now proceeds to examine the captioned O.Ps on

merits.

10 Before plunging into the core issues, it may be necessary to set out one aspect of the matter. In accordance with the case file placed before this Court, senior OP was presented in this court on 27.07.2016 and junior OP was presented in this Court on 16.09.2016. Applying Ssangyong principle, i.e., law laid down by Hon'ble Supreme Court in *Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India* reported in (2019) 15 SCC 131, both captioned O.Ps will be governed by post 23.10.2015 regime of the A and C Act or in other words, captioned O.Ps will be governed by A and C Act as amended by amending Act 3 of 2016, which kicked in with retrospective effect on and from 23.10.2015.

11 Mr.Thriyambak J. Kannan, learned counsel made submissions on behalf of said school in junior OP and summation of submissions of learned counsel is as follows:

(a)AT should have decided whether the claim has been properly instituted by one Sivaraman as it is within the sweep of section 16 of A and C Act;

(b) AT after having held that there is no power

to debit qua ESI and PF ought not to have entered into that arena and permitted withholding of certain specified sums in this regard;

(c) With regard to a letter dated 30.03.2013 (Ex.R.2) served on said school by the Managing Director of STPIL, AT proceeded on the basis that there is no acknowledgement for this, whereas the acknowledgement by one Col.Raghavan (who deposed as R.W.1 on behalf of said school) is very much there.

12 Mr.Abhijeet Sinha, learned counsel made submissions in senior OP on behalf of counsel on record for said school and summation of his submissions are as follows:

(a) There was no valid reference. In this regard, all standard text books on the subject, i.e., Russell on Arbitration and Redfern & Hunter opine that proof of authority is something which the AT must see;

(b) AT has awarded damages by quantifying the same on the basis of the claim made by third parties

which is incorrect;

(c) AT giving directions to sell buses is beyond the scope of reference.

13 In reply to aforementioned submissions, Mr.V.Radhakrishnan, learned senior counsel leading Mr.T.V.Lakshmanan, counsel on record for SSL (sole respondent in senior OP) and Mr.K.Raja, counsel on record for Star (sole respondent in junior OP) made submissions, which are as follows:

(a) On the date of filing of claim petition, there was a valid Board of Directors as one Kannusamy Vasudevan was inducted as Director which is borne out by evidence of C.W.1 (Question Nos.16 to 18 in cross examination); it is, in any event, a curable defect; AT holding that it is beyond the scope of arbitration can at the highest only be an erroneous application of the law which has been ripped off from patent illegality ground; no specific ground has been raised regarding institution in captioned O.Ps and therefore, the argument regarding

institution of claim, for dislodging the impugned award under section 34 of A and C Act is untenable;

(b) Regarding ESI and PF contributions, there is provision for said school (vide said contracts) to terminate said contracts with immediate effect and therefore the AT permitting withholding of certain specified sums in this regard vide impugned awards does not vitiate impugned awards;

(c) Letter dated 30.03.2013 (Ex.R.3) was never referred to by said school in reply dated 22.04.2013 to lawyer's notice (reply to Lawyer's notice dated 13.04.2013) issued by Star, not even in counter and another affidavit dated 22.08.2013 and 11.09.2013 respectively filed in section 9 proceedings, i.e., O.A.No.461 of 2013, but has been propped up for the first time in the counter statement to claim petitions and therefore, the findings of AT vide impugned awards that Ex.R.3 has been created with the connivance of R.W.2 for the purpose of legal proceedings with the intention of

defeating the claims cannot be found fault with.

14 This Court now embarks upon the exercise of setting out its discussion and dispositive reasoning. As alluded to supra, captioned O.Ps are governed by post 23.10.2015 regime of the A and C Act. A section 34 legal exercise does not entail a review on merits qua impugned awards. This court discusses the rival submissions and gives its dispositive reasoning after reminding itself about this basic principle qua a section 34 legal drill.

15 In arbitral proceedings culminating in first impugned award / senior OP, one Mr.K.R.Sivaraman was examined as C.W.1, Ex.C.1 to C-15A were marked (on behalf of SSL), R.W.1 to R.W.3 were examined on behalf of said school and Exs.R.1 to R.9 were marked.

16 This court now examines the contention regarding AT deciding the question as to whether the claim was properly instituted by K.R.Sivaraman. This aspect of the matter is articulated by AT in the second impugned award in paragraph 28 which reads as follows:

'28)In the light of the law laid down in the aforesaid decisions, it is clear that the contention of the respondents, based on the substantive law that in the absence of a

validly constituted Board of Directors and a valid Board resolution authorizing Mr.Sivaraman to represent the claimant before the Arbitrator, the claim is not properly instituted, cannot be countenanced. The contention put forth by the respondents regarding the maintainability of the claim petition is not a dispute arising under the terms of the agreement placed before this Arbitral Tribunal for its decision making and therefore, this question cannot at all be arbitrated. Therefore, the contention of the respondents is rejected and it is held that the claim is properly instituted by the claimant and it is maintainable.'

17 To be noted, a perusal of impugned awards reveals that paragraph 28 extracted supra includes reference to 'aforesaid decisions' which includes reference to *Firm Ashok Traders Vs. Gurumukh Das Saluja* reported in (2004) 3 SCC 155, wherein the issue of an application under A and C Act being filed by an unregistered partnership firm or in other words, interplay between A and C Act (which excludes application of the Civil Procedure Code, 1908) and section 69 of the Indian Partnership Act, 1932 was gone into by Hon'ble Supreme Court.

18 Learned senior counsel for SSL and Star anchors his submissions on evidence before AT to say that a Director was inducted

and therefore, there was a valid Board in place on the date of claim. This cannot be looked into in a section 34 legal drill as section 34 by itself is a limited jurisdiction which is in the nature of an exception to section 35 of A and C Act and is covered by the expression 'Subject to this Part' occurring in section 35 which deals with finality of arbitral awards. In other words, in a section 34 legal drill, this Court has to necessarily go by the impugned award and it cannot look into the evidence before AT which the AT has not looked into. To be noted, in this case, the AT has taken the view that it is not arbitrable and outside the purview of arbitration. However, in the light of AT having drawn a parallel of an unregistered partnership firm, filing an application under A and C Act and in the light of there having been no rival claim from within the company to represent the company, which is a juristic person and claimant before AT, in this case, it does not get aggravated to the extent of being good enough to dislodge the impugned awards. In this regard, submissions of learned counsel for said school predicated on section 16 of A and C Act, at the highest will be 'mere erroneous application of law' as rightly pointed out by learned senior counsel. This Court agrees with the submission that it is a 'mere erroneous application of law' as factually

it can at the highest be a 'mere erroneous application of law' as there is no other rival or counter claim to represent the juristic person. Therefore, owing to the peculiar facts and circumstances of this case, impugned awards just pass the patent illegality test by the proverbial cat's whisker.

19 This takes us to the next submission turning on adhoc permission for withholding specified sums qua ESI and PF. This aspect of the matter is dealt with by AT in the second impugned award in paragraph 30 which reads as follows:

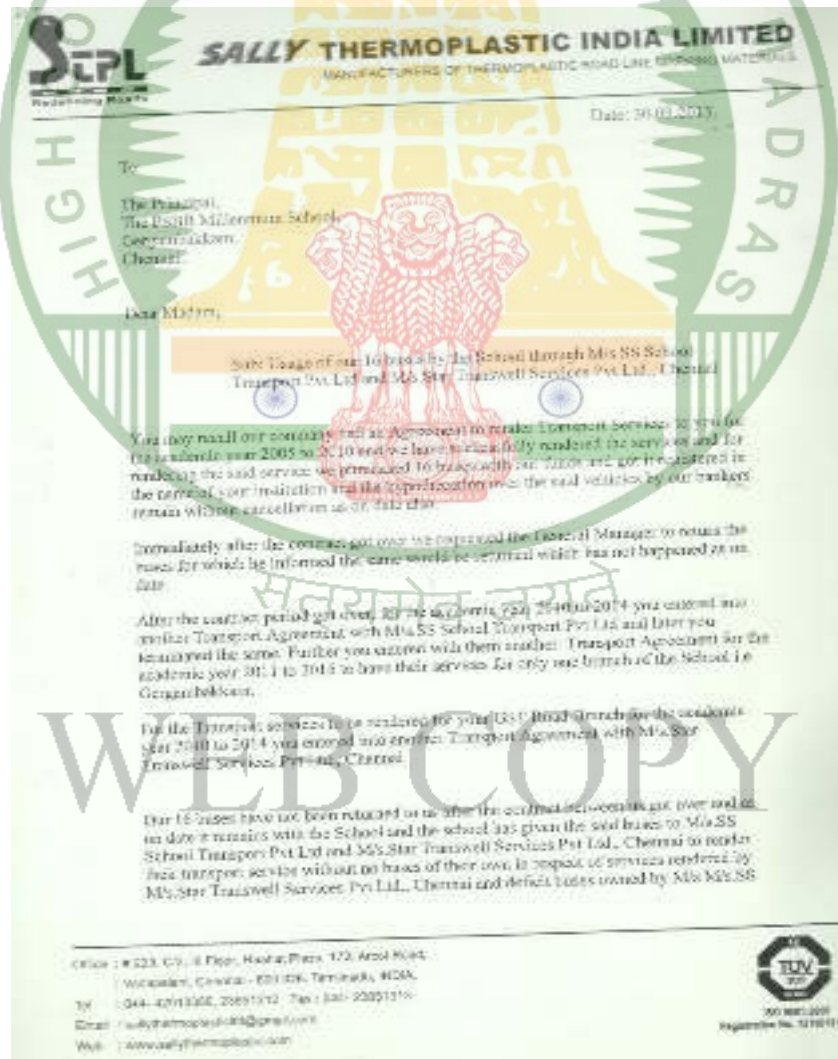
'30)To consider the aforesaid submissions, it will be useful to refer to clause-6 of Ex.C-2. As per clause-6 the transporter shall furnish an undertaking in support of the payments made towards contribution to ESI, P.F. and other statutory remittances as applicable and this must be submitted along with monthly invoice for payment to be released. It is provided under clause 26 of the agreement that in case it is noticed that the transporter does not deposit P.F., ESI and other statutory dues to the respective employees account on time, the 1st respondent reserves right to terminate the agreement with immediate effect. It is further provided therein that without prejudice to the rights of the 1st respondent to

terminate the agreement the transporter shall indemnify and keep indemnified the 1st respondent against all charges, fees, penalties, losses, levies, damages, costs (including Attorney fees), suits, fine, judgments or any other consequences arising due to non-compliance and violation in breach of any agreement specified in applicable Acts/Rules/Schemes including any Schemes by regulatory authorities and 3rd parties.'

20 AT having held that there is no provision in the agreement to debit qua ESI and PF contributions, should not have permitted withholding of the specified sums qua impugned awards is the argument aimed at dislodging the impugned awards, but AT has proceeded on the basis that under clause 26 of first said contract, said school has right to terminate said contract, but said school had not resorted to this course. A perusal of impugned awards brings to light that this is conditional and it is subject to provisions of proof of payment. Considering that PF, ESI are all for benefit of workmen which have been provided statutorily, this Court is unable to hold that the view of AT is an implausible view. It is certainly not a view which shocks the conscience of this Court. On the contrary, impugned awards make provision for ensuring that PF, ESI contributions, which are all for the benefit of workmen and are statutory

dues and this by itself takes it out of the realm of implausible view. This is the end of the road for the protagonist of captioned O.Ps on this point.

21 This takes us to the next submission predicated on 30.03.2013 letter (Ex.R.3) which according to said school was served on it by STPIL. This letter was an exhibit before AT and the same is as follows:





22 Learned counsel drew the attention of this court to some initials / short signature in the lower part of this exhibit and invited this court to compare the same with the signature of Col.Raghavan who deposed as R.W.1 before AT on behalf of said school. In this backdrop,

considering the conclusion which AT has arrived at with regard to above exhibit, i.e., there is no acknowledgement for the same is clearly in the realm of appreciation of evidence and reappreciation of evidence is impermissible qua patent illegality ground. To be noted, this argument regarding this letter is predicated and posited on patent illegality ground. Patent illegality is a ground statutorily available vide sub-section (2A) of section 34 of A and C Act in the post 23.10.2015 regime of A and C Act. This sub section (2A) is circumscribed by a two limbed proviso and vide second limb of proviso, reappreciation of evidence is forbidden. The question of what is appreciation of evidence and scope of a section 34 legal drill qua appreciation of evidence came up for consideration before this court in *14 Reels Entertainment Private Limited, Hyderabad Vs. Eros International Media Limited, Chennai* reported in *AIROnline 2020 Mad 1447* [O.P No.298 of 2020, dated 04.09.2020] and relevant paragraphs are paragraphs 26 to 28 which read as follows:

'26.This takes us to the question of what is appreciation and reappreciation of evidence. Learned counsel on both sides very fairly submitted that they were unable to find a direct case law with regard to what is appreciation and re-appreciation of evidence at least in the context of Section 34 of A and C Act. Saying so, learned counsel submitted that it is desirable that

this principle is discussed in the case on hand. This Court considers it appropriate to do so and for this purpose, this Court considers it appropriate to adopt an illustrative approach.

27. Solely for the sake of illustration, let us take a case where the issue to be tested is whether jural relationship between two parties is that of lessor and lessee or licensor and licensee. Let us assume that a document i.e., contract between parties which is inter alia an adumbration of covenants and clauses between the contracting parties is available before the Adjudicating Authority and that both sides have letin oral evidence. The witnesses are inter alia the contracting parties and that deposition of these parties to the document turn on jural relationship between the parties. Proceeding with this illustration, one has to bear in mind that a mere caption to a document on hand will not conclusively decide the jural relationship between the parties. Likewise, one should also bear in mind that the contents of the document by themselves do not prove a fact. In this backdrop, the Adjudicating Authority, which has the task of decoding and deciphering this document in the light of the document itself, which is an exhibit before it in conjunction with oral evidence, which is the deposition inter-alia of contracting parties to the document, examines at the question of whether there has been transfer of possession of demised portion from one party to the other, as this would be one of the extremely critical questions to decide whether the jural relationship is one of lease or licence. Let us assume that the deposition is to the effect that the demised portion is part of

a larger property and that the question as to who controls the ingress and egress to the demised property also forms part of deposition. Let us also assume that there are some other exhibits in the form of sketches / photographs besides a topography sketch, which describe these aspects of the matter and that witnesses, who are inter alia contracting parties to the contentious document, speak about all this. If the Adjudicating Authority deploys a clinical, forensic approach, sifts through, analyses / scrutinizes all these oral/documentary evidence and comes to the conclusion that the ingress and egress to the immovable property (of which the demised portion is a part) is controlled by one party and that there is no transfer of possession by this party to the other party qua demised portion, the Adjudicating Authority may come to the conclusion that the jural relationship between the contracting parties is a license and not a lease. If sifting and scrutiny of oral/documentary evidence leaves the Adjudicating Authority with a contrary conclusion, the Adjudicating Authority may hold that the jural relationship between the parties is that of a lease. In this illustration, when the matter is carried in appeal, it may well be possible for the protagonist of the appeal to point out certain inconsistencies in the oral evidence and contradictions qua evidence before the Adjudicating Authority. While sifting and scrutinizing of oral and documentary evidence by the original Adjudicating Authority to come to a conclusion about jural relationship between the contracting parties can be described as 'appreciation of evidence', the exercise of Appellate Authority

going into the inconsistencies and contradictions in evidence pointed out by the appellant and having a clinical, forensic relook at the oral/documentary evidence before original Adjudicating Authority can be described as 're-appreciation of evidence'. This is a second bite at the cherry by the protagonist.

28. Continuing with the above mentioned illustration let us assume that the original Adjudicating Authority completely ignored all the exhibits i.e., documentary evidence before it and the oral evidence before it though the contracting parties themselves have deposed as witnesses, merely looks at the contentious document in isolation, goes by the caption, adumbration of covenants and terms used therein, it may well be possible for Appellate forum to hold that original Adjudicating Authority has committed patent illegality without any re-appreciation of evidence. This can be done by holding that the original Adjudicating Authority has ignored vital evidence before it and for this re-appreciation of evidence is not required. In contradistinction, this is a case of campaign by a protagonist for whom a second bite at the cherry is legally forbidden.'

23 This court finds no reason to make a departure from above view. Therefore, this court considers it appropriate to not to make forays into the forbidden arena of reappreciation of evidence. This Court cannot step into the shoes of AT and examine an exhibit to ascertain whether there was acknowledgement and whether it was served, that too by

comparing the signature in that exhibit which is purported acknowledgement with another signature in a deposition. This is completely opposed to the legal philosophy underlining sub section (2A). In this regard, this court reminds itself that section 34 legal drill is neither an appeal nor a revision, it is not even a fulfilled review. It is a mere legal challenge to an arbitral award within the specified slots under section 34. This Court also reminds itself of *Fiza Developers* principle [*Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited* reported in (2009) 17 SCC 796]. This *Fiza Developers* principle was subsequently reiterated by Hon'ble Supreme Court in *Emkay Global* case [*Emkay Global Financial Services Ltd. Vs. Girdhar Sondhi* reported in (2018) 9 SCC 49] and in *Canara Nidhi Limited* case [*M/S. Canara Nidhi Limited vs M. Shashikala* reported in 2019 SCC Online SC 1244]. *Fiza Developers* principle is to the effect that section 34 proceedings are one issue summary proceedings. Hon'ble Supreme Court made it clear that one issue means that arbitral award being put to challenge itself becomes an issue. The sequiter that flows from this is it does not mean that the lis should turn on one issue. In *Emkay Global*, *Fiza Developers* principle was held to be a step in the right direction and

it was again reiterated in *Canara Nidhi Limited*. The sum and substance of core principle underlying these case laws is that section 34 legal drill is a one issue summary procedure.

24 This takes us to the argument pertaining to damages and the contention that the same has been arrived at by taking a claim made by a third party as the basis. In this regard, *Ferro Concrete* case being *State of Rajasthan Vs. Ferro Concrete Construction Private Limited* reported in (2009) 12 SCC 1 and Ennore Port Limited case being *Ennore Port Limited Vs. Skanska Cementation India Limited* reported in 2007 SCC OnLine Mad 782 were pressed into service. Owing to the facts and circumstances of the case on hand, these case laws do not come to the aid of the protagonist of captioned O.Ps, i.e., said school in their efforts to dislodge impugned awards, as these case laws are for the proposition that claim by itself cannot be considered as proof and there cannot be an award of damages when there is no evidence. To be noted, even in *Ferro Concrete Construction* case, it has been held that quantum of evidence requires to be accepted and claim may be a matter within the exclusive jurisdiction of AT and this in other words turns on *Hodgkinson* principle being the principle laid down by English Court in *Hodgkinson Vs. Fernie*

reported in *140 ER 712*, which was reiterated in oft quoted *Associate Builders case [Associate Builders Vs. Delhi Development Authority reported in (2015) 3 SCC 49]*. *Hodgkinson* principle in simplistic term means that AT is the best judge of the quality and quantity of evidence before it. In the instant case, as the measure used is in dispute, this Court finds this argument to be not good enough to dislodge the impugned awards.

25 Though several case laws were placed before this Court in the course of hearing, those which are relevant for answering the points and counter points projected in captioned O.Ps have been referred to at the appropriate places.

26 This takes us to the argument touching upon direction to sell buses. Arbitration agreement between the parties which is in the form of a covenant in said contract (Clause 41 in first said contract and clause 39 in second said contract) reads as follows:

'Any dispute or difference which may arise between the Parties in connection with this Agreement and which cannot be settled amicably shall be finally settled by arbitration by a sole arbitrator appointed by LLF as per the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall

take place at Chennai and the Courts in Chennai shall have exclusive jurisdiction over the matter.'

27 Arbitration agreement is comprehensive and the circumference within which arbitral disputes would fall is very wide. In any event, the core of the dispute is provision of transport services with buses and therefore, this argument that direction to sell buses is beyond the scope of arbitration clause or reference does not hold water, as the reference was qua all disputes that have arisen between the parties which means procurement of buses and sale of the same is inextricably intertwined with the arbitral disputes. On a demurrer, even if it is to be concluded on a separate platform, besides being inevitably and inextricably intertwined with arbitral disputes, it cannot be gainsaid that AT has travelled beyond the scope of reference owing to the width and scope of arbitration agreement and reference.

28 Owing to all that have been set out supra, both captioned O.Ps are dismissed. Parties are left to bear their respective costs.

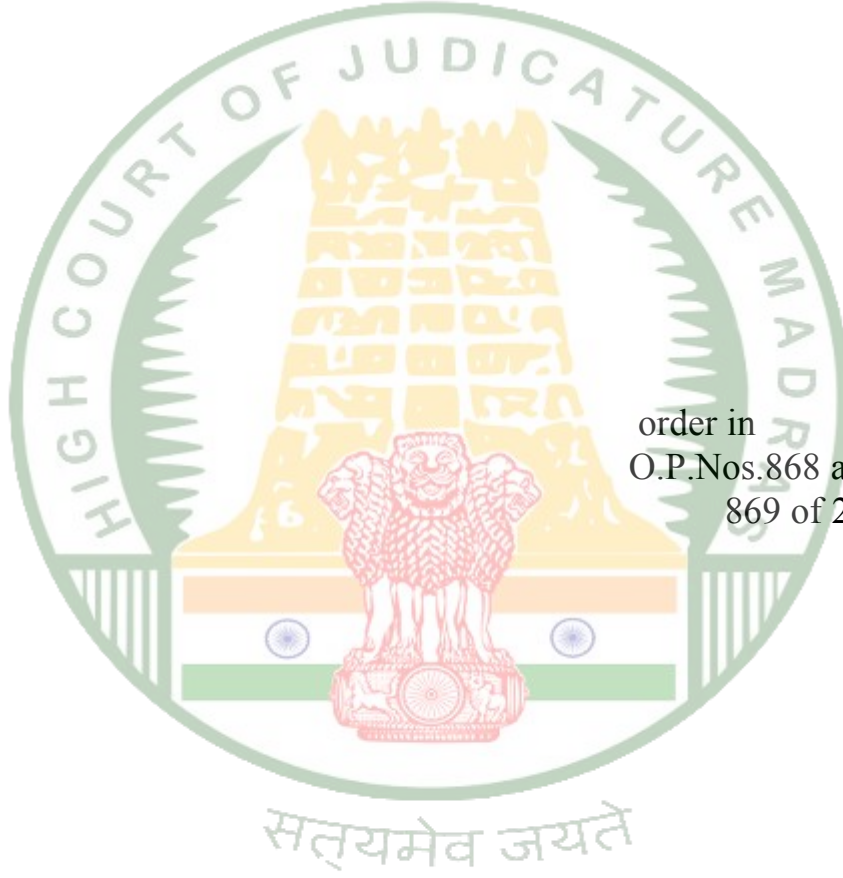
01.04.2021

Speaking order
Index : Yes / No
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O.P.Nos.868 and 869 of 2016

M.SUNDAR, J.

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869 of 2016

01.04.2021

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