



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 14TH DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P. No.923 of 2019
and
A.Nos.8626 & 8628 of 2019
and
A.Nos.2824 & 2822 of 2021

O.P. No.923 of 2019 and A.No.8628 of 2019:-

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of the Memorandum
of Understanding dated 10.07.2012.

And

In the matter of arbitral award dated
03.03.2017

Mr.Sheik Mohammed Nizar,
S/o. Mr.N.K.Jinnah
No.66/47, Halls Road,
2nd Floor 2A,
Kilpauk, Chennai- 600 010

...Petitioner / Respondent /
Applicant in A. Nos.8628 of 2019

-Versus-

M/s.Natarajan Devi Polymers Pvt. Ltd.
Rep.by its Director Mr.Natarajan,
Abraham Pandithar Thottam,
No.20, Opp.KMS Nagar,
Medical College Road, Thanjavur

..Respondent / Claimant / Respondent in
A. Nos.8628 of 2019



Original Petition praying that this Hon'ble Court be pleased to:

(i) set aside the Impugned ex parte award dated 03.03.2017 passed in ARC/SAR/Chennai/No.001/2015 and consequently dismiss the execution petition bearing E.P. No. 96/2017

(ii) Direct the 1st respondent to pay the costs of this petition.

A.No.8628 of 2019:-

Application praying that this Hon'ble Court be pleased to stay the order 03.03.2017 in ARC/SAR/CHENNAI/No.001/2015 on the files of sole arbitrator and consequently the E.P.No.96 of 2017 on the files of Hon'ble Additional District and Sessions Court of Kancheepuram, pending disposal of the appeal.

A.No.8626 of 2019:-

Mr.Shaik Mohammed Nizar,
No.66/47, Halls Road,
2nd Floor 2A,
Kilpauk, Chennai- 600 010

..Applicant

-Versus-

M/s.Natarajan Devi Polymers Pvt. Ltd.
Rep.by its Director,
Ibrahim Pandithar Thottam,
No.20, Opposite K.M.S. Nagar,
Medical College Road, Thanjavur

...Respondent

Application praying that this Hon'ble Court be pleased to dispense with the presence of the original impugned award 03.03.2017.



A.Nos.2824 of 2021:-

A.K.M. Samsu Nihar,
Son of A.K.M. Pitchai,
No. 17/8, Moottaikaran Street,
Chennai – 600001.

... Applicant / 3rd Party / Earlier
Counsel on Record

Vs.

1.Mr.Sheik Mohammed Nizar,
Son of Mr.N.K.Jinnah
No.66/47, Halls Road,
2nd Floor 2A,
Kilpauk, Chennai- 600 010.

... Respondent / Petitioner

2. M/s.Natarajan Devi Plymers Pvt. Ltd.
Represented by its Director Mr. Natarajan
Abraham Pandithar Thottam,
No.20, Opp.KMS Nagar,
Medical College Road, Thanjavur

... Respondent / Respondent

3.T.Siva Saravana Pandian,
Son of C.Tamilarasan,
No. 336I, Shankar Compound, Murugan Colony,
Thiruthangal,
Sivakasi – 626130.

... Respondent / Arbitrator

4. The Secretary,
Bar Council of Tamil Nadu and Puducherry,
Chennai – 600104.

... Respondent

Application praying that this Hon'ble Court be pleased to direct the 4th respondent to produce before Hon'ble Court the copy of enrolment application filed by the 3rd respondent before the 4th respondent which was entertained and permitted the 3rd respondent to enrol on Advocate vide enrolment No.1164/2013 and may be forward for hand writing expert opinion for proper adjudication of enquiry be allowed.



WEB COPY

A.No.2822 of 2021:-

A.K.M. Samsu Nihar,
Son of A.K.M. Pitchai,
No. 17/8, Moottaikaran Street,
Chennai – 600 001.

... Applicant / 3rd Party / Earlier
Counsel on Record

Vs.

1.Mr.Sheik Mohammed Nizar,
Son of Mr.N.K.Jinnah
No.66/47, Halls Road,
2nd Floor 2A,
Kilpauk, Chennai- 600 010.

... Respondent / Petitioner

2. M/s.Natarajan Devi Plymers Pvt. Ltd.
Represented by its Director Mr. Natarajan
Abraham Pandithar Thottam,
No.20, Opp. KMS Nagar,
Medical College Road, Thanjavur

... Respondent / Respondent

3.T.Siva Saravana Pandian,
Son of C.Thamilarasan,
No. 336I, Sankar Compound, Murugan Colony,
Thiruthangal,
Sivakasi – 626130.

... Respondent / Arbitrator

Application praying that this Hon'ble Court be pleased to direct the 3rd respondent to handover his own hand written specimen of few sentences and may be sent for hand writing expert opinion along with the documents available at page 3, 4 and 5 along with typed set filed by the 2nd respondent before this Honble Court be allowed.

This Original Petition alongwith these applications coming on

this day before this Court for hearing in the presence of Mr.S.Sivaraman,



Advocate for the petitioner in O.P. No.923 of 2019 and for the applicant in A. Nos.8626 and 8628 of 2019 and for the 1st respondent in A.Nos.2824 & 2822 of 2021 and Mr.R.Srinivas, Advocate for the respondent in O.P.923 of 2019 and A. Nos.8626 and 8628 of 2019 and for the 2nd respondent in A.Nos.2824 and 2822 of 2021 and upon reading the petition and the award dated 03.03.2017 and the order herein dated 18/08/2021, and this Court having observed that the respondent did not have the right to unilaterally constitute the arbitral tribunal, therefore, the Constitution and Composition of the arbitral tribunal is certainly not in accordance with the arbitration agreement, in addition, the facts on record disclose that the petitioner did not have a reasonable opportunity to present his case, for both these reasons, the arbitral award is not sustainable, it is ordered as follows:-

That the arbitral award dated 03.03.2017 passed in ARC/SAR/Chennai/No.001/2015, be and is hereby set aside.

2) That the respondent herein, be and is hereby directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as costs to the petitioner herein, within a period of four weeks from the date of receipt of a copy of this order.

3) That both parties hereto, shall be entitled to the benefit of Section 43(4) of the Arbitration and Conciliation Act, 1996, in case they intend to institute de novo arbitral proceedings.



4) That all further proceedings and inquiries in relation to this matter, do stand closed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 14th DAY OF DECEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.-II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



ARS
23.12.2021
WEB COPY

7

O.P. No.923 of 2019
and
A.Nos.8626 & 8628 of 2019
and
A.Nos.2824 & 2822 of 2021

ORDER

DATED : 14.12.2021

THE HON'BLE MR.JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL : 28.12.2021

APPROVED ON : 28.12.2021



WEB COPY

8

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2021

Coram:

THE HONOURABLE MR.JUSTICE

SENTHILKUMAR RAMAMOORTHY

O.P.No.923 of 2019

and

A.Nos.8626 & 8628 of 2019

and

A.Nos.2824 & 2822 of 2021

Mr.Sheik Mohammed Nizar

.. Petitioner

Vs.

M/s.Natarajan Devi Polymers Pvt. Ltd.

Rep. by its Director Mr.Natarajan

Abraham Pandithar Thottam,

No.20, Opp. KMS Nagar,

Medical College Road, Thanjavur

.. Respondent

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the impugned ex-parte award dated 03.03.2017 passed in ARC/SAR/Chennai/No.001/2015 and consequently dismiss the execution petition bearing E.P.No.96 of 2017 and also direct the respondent to pay the costs of this petition.



For respondent : Mr.R.Srinivas

ORDER

The petitioner assails an arbitral award dated 03.03.2017. The petitioner was the respondent in the arbitral proceedings.

2.The petitioner and the respondent entered into an Memorandum of Understanding dated 10.07.2012. The said Memorandum of Understanding pertained to a property situated at S.No.389/1A1A, Perungulathur Village, Tambaram Taluk of an extent of 3.58 acres. It appears that the purpose of the Memorandum of Understanding was for the development of the said property by way of provision of financial assistance in relation thereto.

3.It is also appears that a subsequent Memorandum of Understanding was entered into between the petitioner and the respondent on 17.12.2015. Meanwhile, it appears that disputes arose between the parties. The respondent herein took steps to constitute an arbitral proceeding. Such arbitral tribunal entered upon reference and conducted proceedings. Eventually by the impugned award dated 03.03.2017, the arbitral proceedings were concluded.



WEB COPY

4.The petitioner assails the arbitral award on multiple grounds.

The principal ground on which the arbitral award is assailed is that the respondent unlawfully constituted the arbitral tribunal. The petitioner relies upon Clause 12 of the Memorandum of Understanding dated 10.07.2012, which is set out below:-

“12.In case of dispute between the parties, it shall be solved by mutual discussions, if the parties herein could resolve the disputes by mutual discussion the same shall be referred to a sole Arbitrator. The place of Arbitration shall be at Chennai.”

5.In addition, the petitioner asserts that he did not receive notice from the arbitral tribunal and that he could not, consequently, present his case before such tribunal. Several other grounds of challenge are raised in the petition, but it is not necessary to deal with the same.

6.The respondent agrees that the arbitration clause in the Memorandum of Understanding provides for the resolution of disputes by a sole arbitrator, and that it does not confer the power of appointment on any one party. In any event, in light of recent judgments of the Hon'ble Supreme



WEB COPY

7. While the matter was pending before this Court, certain contentious issues were raised with regard to the conduct of the arbitral proceedings and evidence was recorded in relation thereto. At this juncture, both the contesting parties submit that they do not intend to proceed with the inquiry in relation to such allegations and that the matter may be laid to rest.

8. The petitioner, however, submits that he incurred considerable expenditure in prosecuting the present petition and, therefore, makes a request for payment of costs by the respondent.

9. On examining Clause 12 of the Memorandum of Understanding, the undoubted position that emerges is that the respondent did not have the right to unilaterally constitute the arbitral tribunal. Therefore, the constitution and composition of the arbitral tribunal is certainly not in accordance with the arbitration agreement. In addition, the facts on record disclose that the petitioner did not have a reasonable opportunity to present his case. For both these reasons, the arbitral award is not sustainable.

10. Therefore, the arbitral award dated 03.03.2017 is set aside and



O.P.No.923 of 2019 is allowed. The respondent is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as costs to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Both parties shall be entitled to the benefit of Section 43(4) of the Arbitration and Conciliation Act, 1996, in case they intend to institute de novo arbitral proceedings. In light of this order, all further proceedings and inquiries in relation to this matter are closed.

Sd/-S.K.R.J.
14.12.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.