IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM

The Hon'ble Mr. Justice **PARESH UPADHYAY**
and
The Hon'ble Mr. Justice **D.BHARATHA CHAKRAVARTHY**

O.S.A.No.336 of 2021

M/s.Murali Transport rep. By its
Sole Proprietor T.N.Selvarangan .. Appellant

Vs.

1.Indian Oil Corporation Ltd., rep. By its
Deputy General Manager (Plant),
Lube Blending Plant, Tondiarpet,
Chennai – 81.

2.The Senior Manager (Plant),
Indian Oil Corporation Ltd.,
Lube Blending Plant,
Tondiarpet, Chennai – 81.

3.P.Venkataramanan,
Sole Arbitrator,
Indian Oil Corporation Ltd.,
Level-4, Tamil Nadu State Office,
139, Nungambakkam High Road,
Chennai – 34. .. Respondents

Appeal filed under Order XXXVI Rule 9 of O.S. Rules against the order dated 05.11.2019 made in O.P.No.723 of 2007.

For Appellant : Mr.K.Premkumar

For Respondents : Mr.Abdul Saleem
for M/s.AAV Partners for R1 & R2

JUDGMENT
(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

1. The sole proprietor of the concern – M/s.Murali Transport, who is aged about 84 years is on appeal before us.

2. The factual matrix in which this original side appeal arises is as follows:

2.1. In January 2001, a contract was entered into between the appellant and the first respondent Corporation for transport of oil from Chennai to Kottayam and after two extensions of contract, the period was over on 31.03.2004. When the final bill was submitted by the appellant, a dispute was raised by the first respondent Corporation stating that had the appellant taken another shorter route, number of kilometres would be 101 kms less and stating so a sum of Rs.98,522/- was withheld. The appellant therefore raised a dispute and an arbitrator was appointed on 15.02.2006.

2.2. The claim petition was filed on 30.04.2006 claiming the said sum of Rs.98,522/- along with further interest at the rate of 18 % per annum. Thereafter, the award was passed, dismissing the claim of the appellant on 07.03.2007. Aggrieved by the same, the appellant approached this Court by way of petition under Section 34 of the Arbitration and Conciliation Act, 1996 in O.P. No.723 of 2007.

2.3. By an order dated 05.11.2019, the learned single Judge found that the award of the arbitrator was totally unsustainable and there is not even discussion on the relevant question. Therefore, finding patent illegality, the award was set aside. However, in view of the fact that the petition was to set aside the award under Section 34 of the Arbitration and Conciliation Act, 1996, the learned single Judge had given liberty to the appellant to initiate *de novo* proceedings for the purpose of making monetary claims that were the subject matter of this arbitration. Aggrieved by the said order, the petitioner/ claimant is in appeal before this Court.

3. First, we find that the matter is lingering from the year 2004. Second, the appellant is aged 84 years. Third, on merits of the

matter, when the appellant had actually transported through the route which is covering 765 kms and raised a bill to that effect, very belatedly, based on maps, without considering the fact as to whether the route would be conducive for a heavy vehicle to transport oil or not, just for the sake of raising a dispute, the first respondent Corporation has raised a dispute and his claim has been warded off successfully till this date. However, in view of the law relating to the scope of interference by this Court under Section 34 of the Arbitration and Conciliation Act, 1996, no exception can be taken against the order of the learned single Judge in setting aside the award with liberty to the appellant to initiate *de novo* proceedings. To that extent, the order of learned single Judge is sustainable.

4. However, we find that while disposing of the original petition, the learned single Judge had not at all considered the question about costs. To that extent, the order of the learned single Judge is not sustainable. The appellant had faced arbitration, thereafter the original petition and is now before this Court. When the appellant had made out a case for setting aside the arbitral award, he is entitled for the costs.

5. In view of the overall facts and circumstances, considering the extreme attitude on the part of the first respondent Corporation in conducting and perpetrating this litigation, we are of the view that on the facts and circumstances of this case, costs of Rs.2,00,000/- is appropriate to be imposed on the first respondent Corporation which was omitted to be done by the learned single Judge.

6. In the result, the order of learned single Judge dated dated 05.11.2019 made in O.P.No.723 of 2007 is upheld to the extent of directions given thereof in para 9, however with a modification that the appellant will be entitled for a sum of Rs.2 lakhs as costs. The original side appeal is disposed of accordingly. No costs.

(P.U., J) (D.B.C., J)
04.11.2022

Index:Yes
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To

1.The Deputy General Manager (Plant),
Indian Oil Corporation Ltd.,
Lube Blending Plant, Tondiarpet,
Chennai – 81.

2.The Senior Manager (Plant),
Indian Oil Corporation Ltd.,
Lube Blending Plant,
Tondiarpet, Chennai – 81.

3.The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.

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O.S.A.No.336 of 2021

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