



A.No.4113 of 2021

APPLICATION No.4113 of 2021
in O.P.No.352 of 2021

WEB COPY

N.SATHISH KUMAR, J.

This application has been filed to recall the order dated 24.09.2021 in O.P.No.352 of 2021 filed for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2.The order is sought to be recalled mainly on the ground that the applicant was never served with any notice at the relevant point of time. The further contention is that he was the U.S. citizen, though four notices were ordered by this Court, Affidavit of Service was filed for only on one occasion and that too notice was not served. Therefore, it is contention of the learned counsel for the applicant that when there is no proper service as per law, the order passed has to be recalled.

3.It is also submitted by Mr.Roshan Balasubramanian, the learned counsel for the applicant that, before notice he has also intimated his correct address to the respondent, despite the same, incorrect address has been given to the Court and the service was also not been effected as it is was directed by this Court.



A.No.4113 of 2021

4. Whereas, the learned counsel for the respondent would submit that the notice has been returned as left. Thereafter, publication has been effected. According to him, if publication is stated to have been effected itself is deemed to be a proper service. Hence opposed the application.

5. It is relevant to note that before passing any orders on the ground of exparte order, it must be established that notice is either taken to the correct address or the party should have refused to receive the notice. In this case, it is stated that the petitioner is the U.S. citizen, but the address shown is Chennai. Notice stated to be served has not been served and returned to the sender on the ground “addressee left”. Immediately publication has been effected and even the Court while ordering substituted service, specifically stated that the publication should be effected in one vernacular daily and in one English paper, whereas, the publication was effected only in vernacular paper and not in English paper as directed by this Court. Further, before effecting any publication, a copy of the summons has to be affixed in conspicuous place in the Court house of the person said to have lastly resided.



A.No.4113 of 2021

6.Be that as it may, when the summons were not served and only one postal notice has been sent and the Court summons were also returned as addressee left and substituted service also not effected as per the direction of the Court and effected only in vernacular and not in English such service cannot be deemed to be a proper service. Such view of the matter, this Court is inclined to recall the order dated 24.09.2021 in O.P.No.352 of 2021.

7.This application stands allowed accordingly. The order dated 24.09.2021 in O.P.No.352 of 2021 is hereby recalled.

8.Post O.P.No.352 of 2021 before the regular Court for passing orders on merits.

31.10.2022
(1/2)

Internet : Yes / No
Index : Yes / No
Speaking / Non-speaking order

kas



WEB COPY



A.No.4113 of 2021

N.SATHISH KUMAR,J.,

kas

APPLICATION No.4113 of 2021
in O.P.No.352 of 2021

31.10.2022
(1/2)