



C.R.P. No. 379 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 379 of 2023

and

C.M.P. No. 3108 of 2023

Eminent Auto Parts Private Ltd.,
Rep. by Directors Sri.Amkur Jain,
C-165, Basement, Mayapuri Industrial Area,
Phase-II, New Delhi-110064.

... Petitioner

Vs

Ford India (Private) Ltd.,
S.P.Koil Street,
Chengalpet-603204.

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order dated 22.12.2022 passed in I.A.No.1 of 2022 in Arbitration petition N.SVJ/2021/Jan/001 by the learned Hon'ble Justice S.Vimala, Sole Arbitrator.

For Petitioner	:	Mr.M.Kalyana Sundaram Senior Counsel for Mr.R.Ravi
For Respondent	:	Mr.V.V.Sivakumar



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ORDER

WEB COPY Challenging the impugned order passed by Hon'ble Dr.Justice S.Vimala, Sole Arbitrator, in I.A.No.1 of 2022 in Arbitration petition N.SVJ/2021/Jan/001, dated 22.12.2022, the petitioner has preferred this Revision.

2. Heard, Mr.M.Kalyana Sundaram, learned Senior Counsel appearing for Mr.R.Ravi, learned counsel on record for the petitioner and Mr.V.V.Sivakumar, learned counsel for the respondent.

3. The respondent herein has filed an application before the Arbitral Tribunal presiding over by Dr.Justice S.Vimala (Retd.), Sole Arbitrator, under Section 23(2) of the Arbitration and Conciliation Act, 1996 praying to produce the annexed document R21 and R22 on record on his side. The said application was objected by the claimant / revision petitioner.

4. On hearing both sides, the application was allowed by the Tribunal holding that, since it is the stage of receiving the evidence and the



respondent was also permitted to adduce additional evidence with reference to those two documents with liberty to the other side to adduce rebuttal evidence. The nature of the document can be decided only at the time of final adjudication, by giving an opportunity to the claimant to adduce additional / rebuttal evidence, if he feels necessary. The said IA was allowed, against which the petitioner has filed this revision before this Court.

5. The learned counsel for the respondent submits that the revision as such is not maintainable against the order of the Arbitral Tribunal, under Article 227 of the Constitution of India. In support of his contention, he relies upon the ratio laid down in

1.MANU / TN/8956/2006 at Para.19, 20 and 25 which reads as follows:

"19.Relying on the above principles of law enunciated by the Apex Court on the aspect of the matter under consideration, learned senior counsel for the respondents has strenuously contended that in any view of the matter, the arbitral tribunal cannot be termed as a judicial or quasi



judicial body constituted under any authority of the State and that therefore the Tribunal is excluded from the purview of the powers vested in the High Court under Article 227 of the Constitution of India.

20. Though the learned Senior counsel for the revision petitioner has no quarrel over the said principles of law enunciated by the Apex Court and then followed by this Court in the above decisions, has contended that since the Arbitral Tribunal has not passed any speaking order in accordance with law, the revision petitioner is entitled to invoke the jurisdiction of this Court under Article 227 of the Constitution of India. As has been rightly distinguished by the learned Senior Counsel for the respondents, the principle of law laid down by the Supreme Court in Mukhtiar Singh v.State of Punjab MANU/SC/0133/1995 : [1995]1SCR 38 relied on by the learned Senior Counsel for the revision petitioner cannot help to advance his case for the simple reason that the said decision was rendered in connection with the judgment of the Special Court constituted under the Terrorist Affected Areas (Special Courts) Act 1984 in the appeal by special leave challenging the conviction and sentence imposed by the Special Court on the appellant therein and therefore he has contended that while analysing the judgment rendered by the Special Court, the Apex Court was constrained to make an



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observation with reference to the decision rendered by the Special Court. Hence he has urged that on facts, the said principle of law laid down therein cannot be invoked in this case. On a careful reading of the said decision, this Court is of the opinion that the contention of the learned Senior Counsel for the respondents deserves acceptance.

25. For the foregoing reasons, the above points are answered that this revision petition under Article 227 of the Constitution of India is not maintainable and that the rejection of the objection raised by the revision petitioner by the majority of the Arbitral Tribunal is not liable to be challenged in this revision. Therefore this Civil Revision Petition is dismissed."

2.(2005) 8 SC cases 618 at Para.46 and 47 which reads as follows:

46.The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.



47. We, therefore, sum up our conclusions as follows:

(i) *The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.*

(ii) *The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court.*

(iii) *In case of designation of a Judge of the High Court or of the Supreme Court, the power that is exercised by the designated Judge would be that of the Chief Justice as conferred by the statute.*

(iv) *The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgement. These will be his own jurisdiction to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the designated Judge would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the*



designated Judge.

(v) Designation of a District Judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with the orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

(vii) Since an order passed by the Chief Justice of the High court or by the designated Judge of that Court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a Judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.

(ix) In a case where an Arbitral Tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the Arbitral Tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act.....



6. On considering the ratio laid down in the above cases it clearly denotes that the object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

7. Therefore, coming to the Civil Revision Petition, the respondent herein, before the Arbitration Court sought permission to adduce documents and the same has been permitted by the Tribunal to adduce the additional evidence on either side, therefore, the said order cannot be challenged here as per Section 5 of the Act which restricts Judicial intervention.



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WEB COPY 8. Accordingly, the Civil Revision Petition is dismissed as not maintainable. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet: Yes/No
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