



WEB COPY



Arb. O.P. (Com. Div.) No. 597 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 04.01.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY**

**Arb. O.P. (Com. Div.) No. 597 of 2022**

S.Venkataramanan,  
Partner – M/s. SMK Engineering Industries,  
No. M-75, New TNHB, SIPCOT,  
Ranipet – 3,  
Vellore District.

... Petitioner

Vs.

S.Muthukrishnan,  
Partner – M/s. SMK Engineering Industries,  
No. M-75, New TNHB, SIPCOT,  
Ranipet – 3,  
Vellore District.

... Respondent

**PRAYER:** This Original Petition is filed under Section 34(2-a)(iv), 34(2-b)(ii) and 34 (2A) of the Arbitration and Conciliation Act, 1996, praying to

- a) set aside the arbitral award passed by the Sole Arbitrator, Mr. C.Prasanna Venkatesh, Advocate in ARB. No. 1 of 2021 dated 30.07.2022; and
- b) direct the Respondent to pay the costs of the petition.

For Petitioner : Mr. P.C.Harikumar

For Respondent : Mr. C.D.Sugumar



Arb. O.P. (Com. Div.) No. 597 of 2022

WEB COPY

## ORDER

The petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned award dated 30.07.2022 passed by the learned Sole Arbitrator in ARB. No. 1 of 2021.

2. The main ground of challenge to the impugned award is that the reference made by the petitioner/claimant before the learned Sole Arbitrator was with regard to recovery of Rs. 1,03,00,000/- along with interest at the rate of 12% per annum. However, while dealing with the claim of the petitioner/claimant, the learned Sole Arbitrator without passing any order with regard to recovery of money, passed the following order:-

*“This tribunal hence left with o other alternative solution on the basis of the materials before this tribunal which have been placed by both side and after consideration hereby orders as follows:*

- 1. That the firm M/s. S.M.K.Engineering Industries where the claimant and the respondent are partners, stand dissolved.*
- 2. The land and machinery belonging to the firm shall be brought for sale through public auction and after being sold the proceeds be equally divided between the partners after settling lawful*



Arb. O.P. (Com. Div.) No. 597 of 2022

*established dues payable by the firm as on date.*

WEB COPY

*3. That an amount of Rs. 200,000/- be paid as arbitrators fee and the said fee to be shared and paid by both the claimant and the respondent equally.*

*4. Both parties to bear their own costs.”*

He further submits that the scope of reference is only with regard to recovery of money and not with regard to dissolution of the firm and sale of land and machinery. That being the case, the learned Sole Arbitrator has committed patent illegalities in passing the impugned order without any jurisdiction. Therefore, he submits that the impugned award is liable to be set aside on the ground of patent illegalities and lack of jurisdiction.

3. On the other hand, learned counsel for the respondent also submits that the claim made by the petitioner/claimant was only for the purpose of recovery of money and not for the purpose of dissolution of the firm and sale of land and machinery. Therefore, he submits that the impugned award, which has been passed by the the learned Sole Arbitrator beyond the scope of reference and without jurisdiction, is liable to the set aside. He further submits that the petitioner/claimant is not at all a partner and on the assumption that the



petitioner/claimant is a partner, the learned Sole Arbitrator has proceeded to pass the impugned award. In reply, learned counsel for the petitioner/claimant submits that the petitioner/claimant was a partner.

4. Learned counsel for both parties submit that initially reference made by the petitioner/claimant to the learned Sole Arbitrator was registered as ARB. No. 1 of 2017 and the period of arbitration was extended by mutual consent of both parties from time to time. However, all of a sudden, both the parties came to know about the new number provided for the arbitration as ARB. No. 1 of 2021. By referring to the same, learned counsel for both parties submit that by providing new number to the arbitration case without any notice to the parties also, the learned Sole Arbitrator has committed patent illegalities. Hence, they submit that the impugned award is liable to be set aside.

5. After hearing learned counsel for both parties and perusing the materials placed on record, this Court finds that the arbitration case was initially numbered as ARB No. 1 of 2017 and in the impugned award, it has been mentioned as ARB No. 1 of 2021 without any application of mind. That apart, the main reference for arbitration made to the learned Sole Arbitrator was only for



Arb. O.P. (Com. Div.) No. 597 of 2022

recovery of a sum of Rs. 1,03,00,000/- along with interest, but the learned Sole Arbitrator has not at all dealt with this aspect. On the other hand, he has exceeded his jurisdiction by dissolving the firm and bringing the land and machinery of the firm for sale through public auction without any reference in that regard as contended by learned counsel for both parties. Therefore, this Court is of the view that the impugned award is liable to be set aside as the learned Sole Arbitrator has acted beyond the scope of reference and exceeded his jurisdiction and thereby, committed patent illegalities in passing the impugned award. In that view of the matter, the impugned award is set aside.

6. At this juncture, learned counsel for both parties requests this Court to appoint a new Arbitrator to adjudicate the claim of the petitioner/claimant. In such circumstances, this Court feels it appropriate to pass the following order:

i) Hon'ble Mr. Justice M. Vijayaraghavan, Former Judge, Madras High Court, residing at Door No. 2/15, Dr. T.V.Naidu Road, Flat No. 2B, Abirami Foliage, Chetpet, Chennai, Contact No. 90032 68968 is appointed as Sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That the learned Sole Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of



Arb. O.P. (Com. Div.) No. 597 of 2022

six months from the date of receipt of the Order.

iii) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv) That the learned Sole Arbitrator appointed herein shall decide the matter on merits without being influenced or inhibited by any of the observations made in the order of this Court.”

7. This Original Petition is disposed of accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner/claimant as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act, 1996, before the learned Sole Arbitrator.

04.01.2023

vjt

**Note: Issue order copy on 06.01.2023.**

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order

Copy to

Hon'ble Mr. Justice M. Vijayaraghavan,  
Former Judge, Madras High Court,  
Door No. 2/15, Dr. T.V.Naidu Road,  
Flat No. 2B, Abirami Foliage,  
Chetpet, Chennai.



WEB COPY



**Arb. O.P. (Com. Div.) No. 597 of 2022**

**KRISHNAN RAMASAMY, J.**

vjt

**Arb. O.P. (Com. Div.) No. 597 of 2022**

**04.01.2023**