



Arb. Appln. Nos.605 and 606 of 2023

ABDUL QUDDHOSE,J.

Bharathiyar S. and another

.. Applicants/respondents

VS

S.P.Pandian

.. Respondent/applicant

These applications have been filed to recall the exparte order dated 01.09.2023 passed by this Court in O.A. No.685 of 2023 and Arb. Appln. No.401 of 2023. The said common order was passed under Section 9 of the Arbitration and Conciliation Act.

2.The applicants state that they have not received any notice in the aforesaid applications. It is the contention of the applicants that the respondent has suppressed certain material facts, while obtaining an order from this Court under Section 9 of the Arbitration and Conciliation Act.

3.Admittedly, no counters were filed in the aforesaid applications i.e. O.A. No.685 of 2023 and Arb. Appln. No.401 of 2023. The applicants were also set exparte by this Court in the aforesaid applications. Therefore, the common order dated 01.09.2023 passed by this Court in O.A. No.685 of 2023 and Arb. Appln. No.401 of 2023 is an exparte order.



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4.Learned Senior Counsel appearing for the applicants would submit that the applicants will be greatly prejudiced as the Arbitrator may not interfere with the common order passed by this Court on 01.09.2023 as it is an order passed by this Court. However, the said applications have also been disposed of.

5.Being an exparte order, the applicants in these applications will have to be necessarily granted an opportunity to raise all objections before the Arbitrator. The Arbitrator has already acted upon the reference and has issued notice to both the parties and the first hearing was also held.

6.While that be so, the question of entertaining these applications at this stage will not arise. However, the interest of the applicants will have to be protected with regard to their statement that they never received notice in O.A. No.685 of 2023 and Arb. Appln. No.401 of 2023 and they must be given an opportunity to raise all their objections and also be given an opportunity to file a fresh application under Section 17 of the Arbitration and Conciliation Act with regard to the common order passed by this Court on 01.09.2023 in O.A. No.685 of 2023 and Arb. Appln. No.401 of 2023.



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7.Learned counsel for the respondent has also not raised any serious objection if such a liberty is granted, provided the respondent is also granted liberty to raise all objections available to him under law.

8.By consent of both the counsels, on instructions, the applications filed before this Court are treated as applications filed under Section 17 of the Arbitration and Conciliation Act. There is no necessity to file a fresh application under Section 17 of the Arbitration and Conciliation Act by the applicants. Hence, the present applications shall be treated as Section 17 Applications filed under Arbitration and Conciliation Act before the Arbitrator.

9.The respondent is directed to file counter in these applications, which are treated as Section 17 Applications, within a period of two weeks from the date when these applications are placed before the Arbitrator.

10.Liberty is granted to the applicants to file an application under Section 16 of the Arbitration and Conciliation Act before the Arbitrator questioning the jurisdiction to decide the dispute between the parties and the Arbitrator will have to decide uninfluenced by any of the observations made by this Court either in this order or in the earlier order dated 01.09.2023.



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ABDUL QUDDHOSE,J.

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11.In terms of the aforesaid directions, these applications are disposed of.
Once a counter is filed by the respondent in the Section 17 Application, liberty is granted to the applicants in this application to file a reply. However, the same will have to be filed within a period of two days thereafter.

09.11.2023

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Note: Upload on 10.11.2023

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