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*A.No.245 of 2023
in Arb.O.P (Com.Div.) No.225 of 2022*

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M.SUNDAR, J.

Captioned application has been filed with a prayer to modify an order dated 24.06.2022 made by me in the main matter i.e., Arb.O.P (Com.Div.) No.225 of 2022.

2. Short facts are, that Arb.O.P (Com.Div.) No.225 of 2022 was filed *inter alia* under Section 14(2) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity and convenience] with a prayer to terminate the mandate of a sole Arbitrator and for substitution of sole Arbitrator; that this Arbitration Original Petition was disposed of in and by order dated 24.06.2022 *inter alia* acceding to the prayer of the applicant / petitioner. The mandate of former sole Arbitrator was terminated and he was substituted with a learned designated Senior Advocate of this Court as sole Arbitrator.

3. Thereafter, captioned application has been filed on 25.11.2022 with a prayer to modify the order i.e., a prayer to change the place of



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arbitration from 'Madras High Court Arbitration Centre' ['MHCAC' for the sake of brevity], Madras High Court, Chennai - 104 to any other place.

4. I heard Mr.V.Jayakumar, learned counsel for applicant / petitioner.

5. Learned counsel submitted that the applicant/petitioner is in financial difficulty and he is unable to pay the hall charges. To be noted, this is the lone ground on which captioned modification prayer is predicated. It is also to be noted that in the aforementioned 24.06.2022 order, I had made it clear that arbitration sittings shall be held in MHCAC but in accordance with 'Madras High Court Arbitration Proceedings Rules 2017' [hereinafter 'MHC Arbitration Proceedings Rules' for the sake of convenience]. Adverting to MHC Arbitration Proceedings Rules, more particularly Rules 16(2) and 27 thereat, learned counsel submitted that change of venue is permissible. Adverting to paragraph 10 of the support affidavit, learned counsel further submitted that he has made a request in this regard and the request has been made to the 'Arbitral Tribunal' ['AT' for the sake of brevity and convenience].

6. A careful perusal of Rules 16(2) and 27 of MHC Arbitration



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Proceedings Rules makes it clear that while Rule 16(2) provides for AT to hold the sitting/sittings at another venue i.e., a venue other than MHCAC, Madras High Court, Chennai-104, Rule 27 provides a window for change of venue qua MHCAC, if otherwise agreed upon by the parties.

7. I carefully perused the support affidavit and also heard learned counsel for applicant/petitioner. I am of the view that prayer in the captioned application cannot be acceded to as it will suffice to make it clear that learned Arbitrator can consider the Rule 16(2) plea on its own merits and in accordance with law. The reasons i.e., discussion and dispositive reasoning are as follows:

a) The applicant/petitioner has averred that AT has been moved vide a letter dated 26.10.2022. It is the domain of the AT i.e., learned Senior Advocate to consider the same on its own merits and in accordance with law notwithstanding my directive to hold sittings in MHCAC. I would go a step further and say that it is the remit of the AT;

b) In paragraph 12 of the support affidavit an averment has been made saying that best of the infrastructure facilities are



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provided in MHCAC, the prayer has been made only owing to the financial difficulty faced by the applicant/petitioner. (MHCAC is not a profit making entity. It is under the aegis of this Court). Therefore, in the light of this averment by the applicant / petitioner, I am convinced that the prayer for modification of the aforementioned order dated 24.06.2022 cannot be acceded to;

c) The trajectory of the matter also makes it clear that the order which is now sought to be modified itself is one for termination of mandate and substitution of sole Arbitrator *inter alia* under Section 14(2) of A and C Act and any further time spent on the captioned application particularly when the AT has been moved under Rule 16(2) of MHC Proceedings Rules would only cause delay. This would be completely against the sublime philosophy underlying the A and C Act i.e., expeditious adjudication vide 'ADR' ['Alternate Dispute Resolution'] mechanism;

d) There are several other averments in the support affidavit, more particularly in paragraphs 6 and 7 which are



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completely unrelated to the modification prayer. These averments lead to a broad perception that the arbitral proceedings are suffering procrastination and protraction;

e) Earlier 24.06.2022 order has been made after hearing both the contracting parties who were represented by their respective learned counsel;

f) In my order dated 24.06.2022 (sought to be modified now) vide paragraph 8 it has been made clear that proceedings will also be governed by 'The Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017' [hereinafter 'Administrative Cost Rules' for the sake of convenience]. In these Rules, Rule 6 captioned 'Pro-Bono Arbitration Scheme' is an enabling provision under which a party can seek waiver of Administrative cost. The applicant/petitioner has not chosen to make a plea under this provision but points out the provision. This is another reason as to why the prayer in the captioned application cannot be acceded to. It is well open to the applicant / petitioner to do the needful now without being impeded by this order of dismissal.



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If applicant chooses to make a plea under Rule 6 of Administrative cost Rules, the same shall be considered on its own merits and in accordance with law.

8. Before dropping the curtains on the captioned application, I am of the considered view that it will suffice (as already alluded to supra) if it is made clear that it is open to AT to consider the plea of the applicant/petitioner said to have been made vide a letter dated 26.10.2022 in the light of Rule 16(2) of MHC Arbitration Proceedings Rules, notwithstanding the mention that sitting shall be held at MHCAC. For the sake of specificity, it is clarified that the arbitral proceedings which have been kick started and is underway before the substituted second Arbitrator now will *inter alia* stand governed by MHC Arbitration proceedings Rules i.e., Madras High Court Arbitration Proceedings Rules 2017.

9. Peculiar facts of this case includes the position that applicant is eking out livelihood qua one truck, finance for which is subject matter of arbitration and earlier sole arbitrator nomination was *inter alia* unilateral, leading to mandate termination.



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Captioned application is dismissed albeit with the aforementioned observation which has been made in the peculiar facts, circumstances and trajectory of the case owing to which this order will not serve as a precedent in days to come in all such/similar modification pleas. There shall be no order as to costs.

20.01.2023

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