



WEB COPY

O.S.A(CAD)No.57 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

O.S.A(CAD)No.57 of 2024
and
C.M.P.No.12755 of 2024
in
O.S.A(CAD)No.57 of 2024

R.Sarasu
W/o.C.Ramakrishnan

... Appellant

Vs.

R.P.S.Mahendiran
S/o.R.P.Shankar

... Respondent

OSA(CAD)No.57 of 2024 filed under Section 13 of the Commercial Courts Act, 2015 praying to allow the OSA setting aside the impugned order dated 02.01.2024 in Application No.6113 of 2023 and to dismiss the said application.

For Appellant	:	Mr.Silambannan .A Senior Counsel for Mr.K.M.Mrithun Jayan
For Respondent	:	Mr.Sharukumar .S.I



WEB COPY



O.S.A(CAD)No.57 of 2024

J U D G M E N T

[Judgment of the Court was made by M.SUNDAR, J.,]

Captioned intra-Court appeal i.e., 'Original Side Appeal' {hereinafter 'OSA' for the sake of brevity} has been filed in this 'Commercial Appellate Division' {hereinafter 'CAD' for the sake of brevity} on 29.01.2024 assailing a terse order dated 02.01.2024 in Application No.6113 of 2023 made by Commercial Division. This '02.01.2024 order' shall hereinafter be referred to as 'impugned order' for the sake of brevity, convenience and clarity and the same reads as follows:

'The learned counsel for the respondent submits that he would like to file a counter affidavit.

2. This application has been filed only to extend the mandate of the Arbitral Tribunal. I see no point in keeping the issue pending.

3. Considering the same, this Application stands allowed. Accordingly, the mandate of the Arbitral Tribunal is extended by six months from today to pass an Award.

02.01.2024'



O.S.A(CAD)No.57 of 2024

2. Aforementioned impugned order has been made in an application under Section 29A(4) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' {hereinafter 'A and C Act' for the sake of convenience and clarity} with a prayer for resuscitating the mandate of an 'Arbitral Tribunal' {hereinafter 'AT' for the sake of brevity} which had snapped owing to legal fiction vide Section 29A of A and C Act.

3. Mr.Silambannan.A, learned Senior Counsel appearing on behalf of counsel on record for appellant, who was respondent before Commercial Division qua aforementioned impugned order submitted that the appellant was not given adequate opportunity for filing a counter affidavit. The chronology and the trajectory the matter took are of relevance. Essential dates are as follows:

(a) AT was appointed under Section 11 of A and C Act in a original petition being O.P.No.357 of 2020 on 16.04.2021;

(b) Completion of pleadings within the meaning of Section 23(4) of A and C Act was on 25.02.2022;

(c) 12 months vide sub-section (1) of Section 29A of A



O.S.A(CAD)No.57 of 2024

and C Act elapsed on 25.02.2023;

(d) Six months therefrom (that does not arise in the case on hand as it is nobody's case that parties extended the mandate by consent) but nonetheless for completion of facts, we write that it elapsed on 25.08.2023;

(e) Claimant before AT filed an application in A.No.6113 of 2023 *inter alia* under Section 29A(4) of A and C Act on 31.10.2023. This 29A(4) application being 'Application No.6113 of 2023' shall hereinafter be referred to as 'said extension application' for the sake of brevity, convenience and clarity;

(f) Said extension application was listed before the Commercial Division for the first time on 21.11.2023;

(g) On 21.11.2023, the Commercial Division ordered notice returnable by 05.12.2023 but the matter was not listed on 05.12.2023 instead it was listed on 11.12.2023;

(h) On 11.12.2023, respondent in said extension application i.e., appellant before us entered appearance and



O.S.A(CAD)No.57 of 2024

WEB COPY

Hon'ble Commercial Division granted time for filing counter affidavit and directed the matter to be listed on 02.01.2024 for filing counter. 11.12.2023 order of Hon'ble Commercial Division reads as follows:

'Notice on the respondent has been served.

2. Mr.S.Balaganesh, learned counsel appears and undertakes to file vakalat and counter affidavit if any by the next date of hearing.

3. List this case on 02.01.2024 for filing counter affidavit.

4. Registry is directed to print the name of the respondent in the Cause List.'

*{underlining made for the sake of convenience
and ease of reference}*

(i) On 02.01.2024, in the very next listing, the impugned order was made (to be noted, impugned order has been extracted and reproduced supra);

4. The chronology supra which captures the trajectory qua said extension application before the Commercial Division is telltale and



O.S.A(CAD)No.57 of 2024

therefore, we deem it appropriate to write that we would not dilate more on the same.

5. In the light of what has been captured supra, a *prima facie* case for issue of notice has been made out.

6. Issue notice.

7. Mr.Sharukumar.S.I, (Enrol.No.4629 of 2021) with address for service at No.3B, Third Floor, Sri Venkatesh Bhavan, No.71/35, Armenian Street, Parrys, Chennai- 600001, Mobile No.9003184869, who was present in Court {who is also counsel on record for applicant before the Commercial Division qua said extension application and learned counsel for claimant before AT} accepted notice for lone respondent.

8. The fundamental question of whether an intra-Court appeal under Section 37 of A and C Act would lie as against impugned order arises but considering the very limited legal perimeter within which the captioned matter will have to perambulate, with the consent of both sides, this question



O.S.A(CAD)No.57 of 2024

is left open with the consent / at the request of both sides as they agreed for disposal of captioned OSA by way of a consent order. When we say that this question is left open, we make it clear that this order will not serve as a precedent for any other case of similar nature or any other matter qua Section 37 appeal. We also make it clear that in another matter where there is a legal tussle / contest regarding maintainability, we would embark upon the legal drill of deciding the maintainability.

9. In the case on hand, as already alluded to supra, considering the limited landscape within which the matter perambulates, the main OSA was taken up with the consent of both sides and the following consent order is made:

(i) Impugned order being order dated 02.01.2024 made in Application No.6113 of 2023 is set aside and the matter is remitted back to the Commercial Division;

(ii) Impugned order is set aside without expressing any view or opinion on the merits of the matter solely for the purpose of facilitating a *de novo* hearing before the Commercial



O.S.A(CAD)No.57 of 2024

WEB COPY

Division which has become necessary owing to the appellant before us not being given adequate opportunity for filing counter affidavit;

(iii) As the impugned order is set aside in the light of the chronology and the trajectory captured supra, the mandate of AT as of today has snapped (subject of course to being resuscitated by the Commercial Division post remand or subject of course to any other order which the Commercial Division may pass post remand). This means that there will be no further proceedings before AT and AT will not make an Arbitral Award and put proceedings on hold as it stood in the last sitting on 18.06.2024. Though obvious, we make it clear that if the mandate is resuscitated, AT will continue from where it stopped on 18.06.2024;

(iv) We are informed that a contempt petition being Cont P.No.2274 of 2023 has been filed and an FIR (FIR No.124 of 2020) has already been registered with the jurisdictional police station i.e., Tiruvallur Town Police Station. This



O.S.A(CAD)No.57 of 2024

WEB COPY

contempt petition and FIR will be kept in abeyance till the Commercial Division pronounces its verdict in said extension application post remand i.e., remand vide this order. To be noted, this arrangement is by consent of parties as it is necessary to balance the rights of parties and also preserve the position of parties so that there will be a level field for the legal drill to ensure;

(v) Appellant before us, who is respondent in said extension application undertakes to file counter affidavit on or before 08.07.2024 Monday, after giving advance copy of the same to learned counsel for respondent before us (applicant in said extension application) i.e., Mr.Sharukumar.S.I by 05.07.2024;

(vi) We request the Commercial Division to have the said extension application listed within one week therefrom i.e., by 15.07.2024 subject of course to convenience of Hon'ble Commercial Division and dispose of the said extension application on its own merits and in accordance with law, after



O.S.A(CAD)No.57 of 2024

WEB COPY

hearing both sides and after taking into account the counter affidavit to be filed by appellant preferably, within a fortnight therefrom i.e., by 29.07.2024;

10. This Bench deems it appropriate to place on record its appreciation for Mr.Sharukumar.S.I, (Enrol.No.4629 of 2021) with address for service at No.3B, Third Floor, Sri Venkatesh Bhavan, No.71/35, Armenian Street, Parrys, Chennai- 600001, Mobile No.9003184869 for (a) able assistance provided in the Admission Board itself instantaneously on taking notice by giving facts and dates with specificity; and (b) for adopting a very fair approach and taking a pragmatic stand.

11. Captioned OSA is disposed of in the aforesaid manner with the aforesaid observations / directives. Though obvious, we reiterate that we have not expressed any view or opinion on the matter and the Commercial Division will decide the matter post remand on its own merits and in accordance with law. Consequently, captioned Civil Miscellaneous Petition is also disposed of. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

27.06.2024



O.S.A(CAD)No.57 of 2024

Index : Yes
Speaking
Neutral Citation : Yes
mk

To

The Sub-Assistant Registrar
Original Side
High Court, Madras.

Page Nos.11/12



WEB COPY



O.S.A(CAD)No.57 of 2024

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

O.S.A(CAD)No.57 of 2024

27.06.2024

Page Nos.12/12