



O.P.No.57 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.11.2023	Pronounced on: 04.06.2024
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CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Comm.Div.)No.57 of 2023

and

Application No.631 of 2023

M/s.A.K.Events

Rep.by its Proprietor

Mr.M.Ravisankar @ Rafiq

.. Petitioner

Vs.

M/s.JSB FILM STUDIOS

Rep.by its Proprietor

J.Satishkumar

.. Respondent

Prayer: Original Petition is filed under Section 34 (1) & 34(2)(b)(i) and (ii), 34(2A) r/w Section 21, 31(7) & 31-A(2)(a) of the Arbitration and Conciliation Act, 1996 and Section 2(1)(9c)(xviii) and 10(2) of the Commercial Courts Act, 2015 praying to set aside the Common Arbitral Award dated 30.11.2022 bearing Arbitration Dispute Nos.1 and 2 of 2022 passed by the Sole Arbitrator in its entirety and to direct the respondent to pay the costs and to grant such further reliefs.

For Petitioner : Mr.K.V.Babu



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For Respondent : Mr.P.V.Balasubramaniam
Senior Counsel
for Mr.S.Rajithi Kumar

ORDER

Heard the learned counsel for the petitioner and the learned senior counsel for the respondent-claimant.

2. This is the second round of litigation before this Court under Section 34 of the Arbitration and Conciliation Act, 1996. Earlier, an Award dated 30.11.2021, came to be passed by an Arbitrator appointed by this Court pursuant to order dated 11.3.2021 in O.P.No.548 of 2020. By the aforesaid Order, the Court appointed an Advocate (since designated as a senior Advocate) as an Arbitrator.

3. Award dated 30.11.2021 passed by the learned Arbitrator was later set aside by this court on 25.7.2022 in Arb.O.P.No.300 of 2022 filed by the petitioner herein.

4. The dispute between the petitioner and the respondent-claimant had earlier arisen on account of Ex.C1 A.R.Rahman Concert Agreement



dated 15.03.2019 for Mumbai and Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019 for Chennai signed between them. Since a composite award was passed on 30.11.2021, this Court vide its order dated 25.07.2022 in Arb.O.P.No.300 of 2022, had set aside the award dated 30.11.2021 with the following observations:-

- “12. After some arguments, both sides agreed that it would be desirable to douse aforementioned controversy regarding multiple contracts and single Arbitral Tribunal now and here by constituting two Arbitral Tribunals constituted by the same sole Arbitrator, who shall be a former Hon'ble Member of Bench of this Court and have the matter-re-arbitrated.
13. To be noted, going by *McDermott* principle i.e., ratio laid down in *McDermott International Vs. Burn Standard Co. Ltd.*, reported in (2006) 11 SCC 181 more particularly paragraph 52 thereat, there shall be re-arbitration when there is judicial intervention quaan arbitral award.
14. As AKR on its own volition has agreed to pay back Rs.25,00,000/together with simple interest at the rate of 12% per annum from 30.11.2021, that limb of this order shall not be seen as partially sustaining the impugned award. It is a stated position of AKR, therefore it forms part of this order and it will continue to be an undertaking *de hors* the impugned award which shall now be set aside *infra*.



15. To be noted, this Court is inclined to set aside the impugned award on the short point that it has proceeded on the basis that different agreements can be referred to single arbitration proceedings particularly when the appointment of arbitrator by the Section 11 Court is qua Exs.C1 and C2 without any reference to Exs.C3 to C9 or other arrangements which have come into existence by way of exchange of correspondence.
16. Both parties also agreed that re-arbitration can be on the basis of pleadings that have already been completed and exhibits that have already been marked before AT. To be noted, this Court is informed that there was no oral evidence before AT and therefore, the question of deposition does not arise. In this view of the matter, both parties agreed to resort to Fast track arbitration under Section 29 B of A and C Act.
17. The following consent order is made:
 - a) Impugned award i.e., award dated 30.11.2021 bearing reference Arbitration Proceedings Re O.P.No.548 of 2020 is set aside;
 - b) By consent, both parties would go for re-arbitration before two Arbitral Tribunals to be constituted by one sole Arbitrator. One Arbitral Tribunal qua Ex.C2 i.e., Concert Agreement dated 29.05.2019. Second Arbitral Tribunal shall be qua title sponsor for Chennai show which has come into existence in the light of communications exchanged between the parties between 11.07.2019 and 02.03.2020 inter alia vide Exs.C3 to C9;
 - c) Constitution of two Arbitral Tribunals will not mean that it is not open to the**



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parties to raise the issue as to whether Exs.C3 to C9 and other correspondence exchanged between the parties constitute an integral part of Ex.C2 or as to whether these have to be treated as separate and distinct agreements;

d) Hon'ble Mr. Justice R. Balasubramanian (Retd.), Former Judge of this Court residing at No.5, Tiger Varadachari 1st Road, Kalakshetra Colony, Besant Nagar, Adyar, Chennai - 600 090 (Ph: 24465599, Mob: 94443 53535) is appointed as sole Arbitrator to constitute two Arbitral Tribunals, one qua Concert agreement dated 29.05.2019 (Ex.C2) and the other *inter alia* pertaining to inter alia title sponsor vide communications exchanged between the parties between 11.07.2019 and 02.03.2020. Hon'ble Arbitrator is requested to enter upon reference qua 29.05.2019 Concert agreement besides subsequent communications regarding title sponsor, adjudicate upon arbitrable disputes that have arisen between the parties based on pleadings, documentary evidence [exhibits which are already on record] qua AT which made the impugned award, which has now been set aside;

e) Arbitration shall be Fast track arbitration under Section 29B of A and C Act;

f) Hon'ble Arbitrator is requested to hold sittings in 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) by applying Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble



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Arbitrator for each of the two Arbitral Tribunals shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017 for each of the two Arbitral Tribunals.

18. Captioned Arb.OP is disposed of by this consent order in the aforesaid manner. There shall be no order as to costs or in other words, this order is being made leaving it to the two parties to bear their respective costs”.

5. Thus, dispute arising out of Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019 stands settled. Pursuant to the Order dated 25.7.2022 in O.P.No.300 of 2022, setting aside the award dated 30.11.2021, the impugned award dated 30.11.2022 has been passed by the learned Arbitrator who was appointed as the sole Arbitrator vide Order dated 25.7.2022 in O.P.No.300 of 2022. By the impugned award, the learned Arbitrator has partly allowed the claim of the respondent-claimant.

6. The Arbitral Tribunal has framed the following issues for passing the impugned award :-

“1. Whether the respondent has violated Clause 9 of the Agreement dated 29.05.2019 and if so,



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whether the claimant is entitled to the sum of Rs.50 lakhs as claimed by him in respect of that breach?

2. Whether the amount of Rs.50 lakhs quantified in the claim statement (covered by issue1) is based on any relevant data?
3. Whether Ex.C.3 to Ex.C9 are integral part of Ex.C2 Agreement?
4. Whether Ex.C.3 to Ex.C9 either independently or jointly constitute a valid contract enforceable in law?
5. Where on facts the claimant is entitled to the sum of Rs.2,75,10,000/- as loss on account of breach if any committed by the respondent under Agreement dated 29.05.2019 read with Ex.C.3 to Ex.C9?
6. Whether the claimant is entitled to interest as claimed?"

7. Issue No.1&2 have been answered against the respondent-claimant. The respondent-claimant has not challenged the same.

8. Relevant portion of the impugned award dated 30.11.2022 passed by the learned Arbitrator appointed pursuant to order dated 25.07.2022 setting aside the earlier award dated 30.11.2022 reads as under:-

Issue No.3

1.... [left blank]



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2.... [-do-]

3.... [-do-]

4. The claimant in para 5 of the claim statement pleaded that when he started looking out for a title sponsor to invest for the show to be held in Chennai, the respondent has promised the claimant that he will buy the show and committed by his letter dated 11.07.2019, a consideration of Rs.4.25 crores which was later on reduced by the respondent by his letter dated 24.07.2019 to Rs.4 crores plus taxes. However, it is seen from the statement of Defence that the respondent had denied that he agreed to bring a title sponsor and added that the alleged letter of sponsorship was brought about under duress and coercion. The Tribunal is not going into that question at this stage whether the plea of duress and coercion is proved or not, suffice it to say that those communications relied upon by the claimant in this context clearly show that it is a “fall-out” of Clause 8 of the Contract, i.e. Instead of the claimant looking out for an event sponsor the respondent had undertaken that responsibility by paying a consideration as promised by him. Ex.C2 is the agreement and Ex.C3 to C9 are not totally extraneous to the contractual terms incorporated in Ex.C2. In fact in Ex.C4 letter dated 24.07.2019 there is a reference to the proposal given by the claimant for a live concert show to be held on 10.08.2019 at YMCA grounds. It is the claimant's case that based on that assurance he did whatever he could do under the agreement dated 29.05.2019 to take the proposed live show on 10.08.2019 to its logical end. It is his case that he had done so on the belief and the representation made by the respondent that he will pay the promised amount. Except pleading that the letter of assurance referred to above is the result of duress and



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coercion brought about by the claimant, the respondent had not proved that fact in any manner. Further, it is not the case of the respondent that the claimant had fixed his own event sponsor and with his association the live show on 10.08.2019 in Chennai was held. There is no dispute that the live concert was held in Chennai on 10.08.2019. Exs.C3 to C9 definitely throw light, on their apparent reading that, the respondent was involved in taking over the entire show including finalizing an event sponsor. Therefore, it cannot be held that Ex.C3 to C9 has nothing to do with Ex.C2. Those documents establish beyond doubt that the respondent has finalized the event sponsor and promised to make the payment commencing from the following date. If the respondent had not promised the consideration for taking over the event, the claimant would not have definitely proceeded further without an event sponsor finalized by him under the contract. Under these circumstances the Tribunal answers this issue holding that Ex.C3 to C9 are integral part of Ex.C2 agreement.

Issue No.4

5....[left blank]

6....[-do-]

7. Not only that, the claimant had pleaded that pursuant to the obligation undertaken by the respondent he had transferred a sum of Rs.9,90,000/- to the claimant's account as a part-payment. The defendant does not deny the transfer of this amount but however he would state that money was transferred as a hand-loan and the transferred amount is after deducting interest. Again this is only in the pleading and there is no oral and documentary evidence to support this defence. Amount transferred is a



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substantial amount. If really that was only a loan transaction it should be supported by documentary evidence. It is seen that the transfer was effected on 29.07.2019. If as pleaded the amount was given only as a hand-loan, the respondent should have taken steps to recover that money. Three years is the period of limitation to recover that money if it was really a loan transaction. Period of three years have already elapsed. The facts noted above probablise beyond doubt that the amount transferred is not and could not be by way of a hand-loan but only a payment made to the claimant by the respondent pursuant to his obligation under Ex.C4. The claimant had disclosed as Ex.C12 the text of whatsapp chat between the parties from 18.07.2019 till 24.07.2019. The last of the chat was on the day when Ex.C4 was sent by the respondent. The plea of coercion is belied by the chats on whatsapp exchanged between the parties from 18.07.2019 till 24.07.2019. Ex.C5 establishes the transfer of money. Ex.C6 is the mail dated 02.08.2019 sent by the respondent to the claimant confirming that his commitment made on 17th July of paying Rs.4 crore. It is further stated therein that the issue is closed and payment will start from tomorrow. So it is clear that by Ex.C6 the respondent confirms his commitment to pay Rs.4 crores. In the light of the discussion above it is concluded that Ex.C3 and C4 is legally enforceable on their own terms and it is not vitiated on the ground of coercion. Therefore, this issue is answered in favour of the claimant by holding that Ex.C3 to C6 read with Ex.C2 constitute a valid and enforceable contract in law. The rest of the documents are correspondence exchanged between the parties thereafter.



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9. It is in this background, the impugned award dated 30.11.2022 passed by the learned Arbitrator is under challenge before this Court in Arb.O.P.57 of 2023. While appointing the learned Arbitrator vide order dated 25.7.2022, it was made clear that the petitioner herein was at liberty to raise all legal objections as to the validity of contract pursuant to Ex.C3 to Ex.C9 . Few rights were preserved in order dated 25.07.2022 in Arb.O.P.No.300 of 2022 wherein it was specifically stated that it was open to the parties to raise the issue as to whether Ex.C3 to C9 and other correspondence exchanged between the parties constitute an integral part of Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019 or whether it was to be treated as a separate Contract from the Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019.

10. The petitioner and respondent-claimant had earlier signed Ex.C1 A.R.Rahman Concert Agreement dated 15.03.2019 for a music Concert in Mumbai on 02.10.2019. The petitioner and respondent-claimant had subsequently signed Ex.C2 A.R.Rahman Concert Agreement dated 29.5.2019 for a similar concert in Chennai on



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10.8.2019.

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11. The Concert in Mumbai that was scheduled to be held on 2.10.2019 was cancelled. The respondent – claimant had by then paid a sum of **Rs. 25,00,000/-** as advance to the petitioner.

12. There is no dispute with regard to the amounts that was receivable by the respondent-claimant as far as amount paid in advance to the petitioner on account of cancellation of the Mumbai Concert that was scheduled to be held pursuant to Ex.C1 A.R.Rahman Concert Agreement dated 15.03.2019. This was also recorded in Order dated 25.7.2022 while passing order in [O.P.No. 300 of 2022](#).

13. Thus, the dispute between the petitioner and the respondent-claimant as far as Ex.C1 A.R.Rahman Concert Agreement dated 15.03.2019 for Concert in Mumbai which was cancelled has been resolved.

14. As far as dispute under Ex.C.2 A.R.Rahman Concert Agreement dated 29.05.2019 for the concert in Chennai on 10.8.2019 is



concerned, the petitioner has questioned the arbitrability of dispute in respect of the amounts due on account of the sponsorship obligation that was purportedly taken over by the petitioner herein under negotiations between them.

15. Ex.C.2 AR.Rahman Concert Agreement dated 29.05.2019 was signed for assistance for the AR.Rahman Concert that was curated and promoted by the respondent-claimant. The AR.Rahman Concert was for a duration of 150 minutes on 10.08.2019.

16. Under Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019, the petitioner was to arrange for artist troop ie., singers /guest artists for the Consert and entourage/staffs on 10.08.2019. Under Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019, the respondent-claimant was required to pay to the petitioner a sum of **Rs.3,05,00,555/- + GST** as Artist Fee.

17. Pursuant to Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019, viz., A.R Rahman Live Concert was held in Chennai on 10.08.2019 . Clause 8 of Ex.C.2 A.R.Rahman Concert Agreement dated



29.05.2019 reads as under:-

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8.Event Sponsorship:-

- 8.1.Promoters* may engage the services if selected event sponsors which shall have the right to display their logos in all merchandising and promotional documentation and media in relation to the concert.
- 8.2.Promoters shall not enter into any sponsorship arrangements with entities (i) which are involved with alcohol, tobacco, narcotic drugs or which primarily deal in political or religious causes.
- 8.3.Promoters shall not make any commitments to sponsors in relation to the availability of Artist, for activities that are not specifically permitted under this Agreement. The sponsorship agreement entered by Promoters with sponsors shall make clear that the sponsor is sponsoring the Concert and not the Artist, and that they will not in any way hold themselves out as being endorsed by the Artist.
- 8.4.Sponsor's name and logos may be present and after the performance but not during the performance.

[*Respondent-Claimant]

18. Under the Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019, the respondent-claimant had earlier paid the petitioner a sum



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of **Rs.1,90,00,000/-** as an advance as against the agreed sum of **Rs.3,05,00,000/-**.

19. Ex.C.2 A.R.Rahman Concert Agreement dated 29.05.2019 also contemplated a clause for indemnity in clause 16.2. Clause 16.2 read as under:-

16.2 In no event shall AKR* be liable towards Promoters for any indirect or consequential loss including but not limited to, loss of revenue, loss of actual or anticipated profits, loss of the use of money, loss of anticipated savings, loss of business or turnover, loss of opportunity, loss of goodwill, loss of reputation, loss or damage to or corruption of data, business interruptions arising out of or in connection with this Agreement and/or the Show. Promoters renounces any right to lodge claims or recover damages, expenses loss of profits or loss whatsoever based on whatever legal grounds from AKR, Artist, and/or representatives.”

[*Petitioner]

20. Ex.C2 A R Rahman Concert Agreement dated 29.5.2019 for the concert at Chennai on 10.8.2019 however ran into a bad weather and it appears it became impossible for the respondent-claimant to proceed with the Concert on 10.8.2019.



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21. It appears that the petitioner had by then invested heavily by paying advances to various artist pursuant to Ex.C2 A.R.Rahman Concert Agreement dated 29.5.2019. Under these circumstances, the petitioner vide Ex.C3 letter dated 11.07.2019, informed the respondent-claimant that the petitioner would like to buy out the show from the respondent-claimant for a total consideration of **Rs.4,25,00,000/-**.

22. The commitment of the petitioner under Ex.C3 letter dated 11.7.2019 was on Rs.100/- Non judicial Stamp paper. As per the aforesaid letter in Ex.C3 dated 11.07.2019, the petitioner undertook to pay a sum of **Rs.4,00,00,000/-** to the respondent-claimant by 17th July of 2019 and further a sum of **Rs.25,00,000/-** on the same day directly in favour of one Diamond Babu, a Media Consultant who appears to have been engaged by the respondent-claimant for the A.R.Rahman Concert on 10.08.2019.

23. In Ex.C3 letter dated 11.07.2019, petitioner also stated the Logo presence of both the respondent-claimant and that of the said Diamond Babu will be placed in all promotions for the show. All



sponsorship and enquires brought by the respondent-claimant were to be accepted on mutual consent. All cost relating to Artists, production, TLB and Marketing were to be done by the petitioner. However, the parties could not proceeded further in terms of the offer of the petitioner in Ex.C3 letter dated 11.07.2019.

24. Under these circumstances, vide Ex.C4 dated 24.7.2019, the petitioner represented to the respondent-claimant that the petitioners client had agreed to be the “Title Sponsor” for the show and certain deliverables were required at the sponsorship deck. By Ex.C4 dated 24.7.2019 the petitioner also agreed to pay a sum of **Rs.4,00,00,000s/-** to the respondent-claimant as title sponsorship consideration.

25. Subsequently, the petitioner transferred a sum of **Rs.9,90,000/-** to the respondent-claimant on 29.7.2019 as is evidenced in Ex.C5 dated 29.07.2019. According to the respondent-claimant, the said amount of **Rs.9,90,000/-** was an advance for the sponsorship consideration agreed by the petitioner pursuant to Ex.C4 dated 24.7.2019. On the other hand, it is the case of the petitioner that the aforesaid amount of **Rs.9,90,000/-** was paid to the respondent-claimant as a hand loan.



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26. As per Ex.C6 E-mail dated 2.8.2019 addressed to the respondent-claimant, the petitioner confirmed **Rs.4,00,00,000/-** towards title sponsor and that the payment would start from the following day. However, no further payments were made by the petitioner to the respondent-claimant.

27. In Ex.C7 NOC dated 6.8.2019, the petitioner had also given a NOC. Ex.C7 NOC dated 6.8.2019 reads as under: –

Further to our Artist Contract dated 29th May 2019* for AR Rahman Live in Concert in Chennai, and event dated 10/8/2019, we hereby grant No Objection that all payments are made as per the contract and there is no dues. The final telecast content will be handed over to the Promoters within 30 days after the show date.

[*Ex.C2- A.R.Rahman Concert Agreement dated 29.05.2019]

28. It is in this background, the respondent-claimant invoked the arbitration clause in Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019 vide Ex.C8 Notice dated 22.2.2020. Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019 pertained to concert in Mumbai which was cancelled. In Ex.C8 Notice dated 22.2.2020, the petitioner



was called upon to consent for appointment of a former judge of this High Court as the Sole Arbitrator. However, no separate Notice was issued for alleged breach of the arrangements flowing from Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019 and Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively.

29. The facts on record reveal that barring a sum of **Rs.1,95,00,000/-** out of **Rs.3,05,00,000/-** no further payments were made to the petitioner by the respondent-claimant under Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019. The petitioner has also not claimed any balance amount from the respondent-claimant. It indicates that the petitioner appears to have adjusted the balance amount of **Rs.1,15,00,000/-** [Rs.3,05,00,000 - Rs.1,90,00,000] from the title sponsorship under A.R.Rahman Concert Agreement dated 29.05.2019.

30. Ex.C8 Notice dated 22.2.2020 lead to Ex.C9 Reply Notice dated 2.3.2020 of the petitioner and Ex.C10 Notice dated 17.9.2020 of the respondent-claimant and other exhibits which were marked before the Arbitral Tribunal.



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31. In Ex.C.9 dated 02.03.2020, the petitioner wanted to distance itself from its obligation in Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019. It is in this background the respondent-claimant issued Ex.C10 Notice dated 17.09.2020 to the petitioner.

32. Since the balance amounts were not paid by the petitioner to the respondent-claimant from and out of the amounts agreed to be paid in terms of Ex.C.3 to C.7 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019] respectively particularly in Ex.C6 e-mail dated 2.8.2019 the respondent-claimant issued Ex.C10 Notice dated 17.09.2020.

33. By Ex.C.10 Notice dated 17.09.2020, the respondent-claimant sought to invoke the arbitration clause. In Ex.C.10 Notice dated 17.09.2020, the respondent-claimant called upon the petitioner to pay the following amounts:-

- a. **Rs.2,75,10,000/-** (Rupees Two Crores Seventy Five lakhs and ten thousand only) owing to failure on part of the petitioner to secure title sponsor for the Chennai show under Ex.C.3 to C.7 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019]



respectively.

- b. **Rs.25,00,000/-** (Rupees Twenty five lakhs) with regard to advance amount paid for Mumbai event under Ex.C1 which concert stood cancelled under
- c. **Rs.1,50,00,000/-** (One Crore Fifty Lakhs) with regard to failure on part of the petitioner to provide agreement between the petitioner and the artist Mr.A.R.Rahman for selling the Satellite rights.

34. In all, the respondent-claimant, claimed to have suffered loss to the tune of **Rs.4,50,10,000/-**(Rupees Four Crore Fifty lakhs and Ten Thousand only).

35. This eventually led to filing of **O.P.No.548** of 2020 wherein vide order dated 29.1.2021, Mr V.G.Suresh Kumar, Advocate was appointed as an Arbitrator. Specifically by the order, the learned Arbitrator, was called upon to pass an award within a period of six months from the date of entering reference with reference to claim under Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019 and Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019.



36. Subsequently, by an order dated 11.3.2021, the name of Mr V.G.Suresh Kumar, Advocate was substituted with the name of Mr. Srinath Sridevan, Advocate (since designated as senior Advocate) as the Arbitrator as Mr V.G.Suresh Kumar recused himself from acting as the Arbitrator for resolving the dispute between the petitioner and respondent-claimant under Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019 and Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019.

37. This order has not been challenged by the petitioner. Instead, the petitioner participated in the Arbitral Proceedings before the learned Arbitrator which culminated in the first award dated 30.11.2021. As mentioned above, the said award was set aside vide order dated 25.7.2022 in O.P.No.300 of 2022, and has now culminated in the impugned award dated 30.11.2022 which has been passed by the learned Arbitrator.

38. The challenge to the award dated 30.11.2022 that it did not precede a notice under section 21 of the Arbitration and Conciliation Act, 1996 cannot be countenanced as order passed by this court on 29.1.2021 has not been challenged by the petitioner. That apart in Ex.C10 Notice



dated 17.09.2020, the respondent-claimant has claimed amounts both under Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019, Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019 and Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively.

39. The petitioner has challenged the impugned Award on the following grounds and contentions:-

- i) The learned counsel for the petitioner submits that the respondent has raised a claim for a sum of Rs.2,75,10,000/- towards loss on account of alleged breach of the alleged Title Sponsorship Agreement said to have been entered into between the parties. The respondent has placed reliance upon Ex.C3 and C.4 to establish the existence of an alleged Title Sponsorship Agreement between the parties. Ex.C3 is a letter dated 11.07.2019, whereby the petitioner has proposed to buy out the Live in Concert for Chennai. Ex.C3 and C4 are only negotiation /offer and there is no valid concluded contract between the parties.
- ii) The learned counsel for the petitioner further submits that Ex.C3 Letter dated 11.07.2019 was only an offer made by the petitioner to buy out the show “ himself” from the respondent for a sale consideration of Rs.4.25 crores, ex.C4 Letter dated 24.07.2019 is a communication whereby the petitioner has informed the respondent that “ his client” is



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agreeable to the Title Sponsor for the Chennai Concert and accordingly an offer was made to the respondent on behalf of the petitioner's client for a consideration of Rs.4.00 crores. Therefore, the role of the petitioner under Ex.C3 and Ex.C4 are entirely different.

iii) The learned counsel for the petitioner further submits that A perusal of Ex.C4 would show that the consideration between the parties is :

for the promoter : Rs.4.00 crores

for the title sponsor : Rights to market and exploit in accordance with deliverables issued by the promoter.

Thus, it is submitted that no consideration has been fixed for the petitioner under Ex.C4. In the instant case, though it is claimed by the respondent that the petitioner has promised to secure a title sponsor under Ex.C4 such alleged promise will not in any event amount to an agreement enforceable by law, since there is no consideration for the petitioner under Ex.C4.

iv) The learned counsel for the petitioner further submits that the Arbitral Tribunal has erroneously concluded as though Exs.C3 to C9 are an integral part of Ex.C2 – Agreement . However, there is no discussion or conclusion by the AT that the Arbitration clause contained under Ex.C2 Agreement dated 29.05.2019 would extend or apply to dispute under the alleged Title Sponsorship Agreement. Admittedly, in the instant case, the subject matter of Ex.C2 which is the A.R.Rahman Live in Concert at Chennai, has been successfully conducted as stated by the respondent himself under Ex.C8 dated 22.02.2020. It is also an undisputed fact that there was no Title Sponsor for the AR.Rahman Live in Concert conducted at Chennai. Thus, Ex.C2 has been performed



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without bringing in any Title Sponsor. Hence, performance under Ex.C2 was never dependent upon securing a Title Sponsor.

- v) The learned counsel further would submit that no dispute has been raised or referred in respect of the Chennai Concert Agreement dated 29.05.2019. Furthermore, under the said Ex.C8, Section 21 Notice dated 22.02.2020, the respondent has categorically admitted that as per the Chennai Concert Agreement, the parties have conducted the Live Concert at Chennai on 10.08.2019. The respondent has for the first time introduced a theory of an alleged Title Sponsorship Agreement between the parties in its Rejoinder Notice dated 17.09.2020. Even, in the said Rejoinder Notice, neither the alleged dispute under Title Sponsorship Agreement nor Chennai Concert Agreement dated 29.05.2019 has been referred for arbitration.
- vi) The learned counsel for the petitioner would further submit that the respondent has made a claim of Rs.2,75,10,000/- towards loss suffered owing to the failure on the part of the petitioner to secure title sponsors for the Chennai show. The pleadings in the claim statement would show that the said claim towards loss is only on account of alleged breach of contract. Therefore, the provisions of Indian Contract Act, more particularly Sections 73 & 74 are relevant, which is the substantive law as per Section 28(1) (a) of the Arbitration and Conciliation Act, 1996. Therefore, it is submitted that the impugned common award dated 30.11.2022 is liable to be set aside .

40. In support of the plea, the present O.P., the petitioner has relied

on the following cases:-



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- i. **Padia Timber Company (P) Ltd. vs. The Board of Trustees of Visakhapatnam Port Trust**, AIR 2021 SC 341;
- ii. **M.R.Engineers and Contractors Pvt.Ltd., vs. Som Datt Builders Ltd.**, (2009) 7 SCC 696;
- iii. **Inox Wind Ltd., vs. Thermocables Ltd.**, AIR 2018 SC 349;
- iv. **Bharat Chugh vs. M.C.Agrawal**, 286(2022) DIT 591;
- v. **Shiram Transport Finance Co., Ltd., vs. Narender Singh**, FAO(Comm.)179/2021;
- vi. **State of Kerala and Ors. vs. United Shippers and Dredgers Ltd.**, AIR 982 Ker 281;
- vii. **Devchand Construction vs. Union of India**, ILR 2022(2) Ker67;
- viii. **Maharashtra Small Scale Industries Development Corporation Ltd. vs. Mohid Minerals Ltd.**, Comm.Arbitration Petition No.408 of 2017

41. The contention of the petitioner is that there are two separate transactions in respect of Chennai Concert, ie., One governed by Ex.C2 A.R.Rahman Concert Agreement dated 29.5.2019 and the other vide Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively regarding title sponsorship.



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42. It is the specific case of the petitioner that there was no concluded contract as far as title sponsorship was concerned and therefore there was no dispute that was arbitrable between the petitioner and the respondent-claimant regarding title sponsorship in terms of Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively.

43. It is submitted that as far as the jurisdiction of the Arbitrator are concerned, the arbitration proceedings is pursuant to only the contract between the parties in Ex.C1 A.R.Rahman Concert Agreement dated 15.3.2019 and Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019. It is submitted that the common Award passed in respect of Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively was not arbitrable.

44. It is submitted that the Award passed by the learned Arbitrator shows lack of application of mind as the learned Arbitrator has perversely concluded that the payment made for a sum of Rs.9,90,000/- under Ex.C5 dated 29.07.2019 was in pursuance of Ex.C4 letter dated



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24.07.2019, whereas, under Ex.C6 e-mail dated 02.08.2019 of the petitioner, it has been very clearly stated that the payments will start from 02.08.2019 only.

45. It is the case of the petitioner that the learned Arbitrator erred while coming to the conclusion that the aforesaid amount of **Rs.9,90,000/-** was paid by the petitioner as advance towards title sponsorship pursuant to Ex.C3 and Ex.C4 [dated 11.07.2019, 24.07.2019] respectively. It is submitted that the learned Arbitrator has ignored vital evidence in Ex.C13 dated 04.08.2019, produced by the respondent-claimant, wherein the respondent-claimant has stated that it has not received a single rupee from the petitioner towards the title sponsorship.

46. The case of the petitioner is that before the Arbitral Proceeding also it was categorically stated that there was no arbitral dispute in respect of Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively.

47. It is submitted that while setting aside the earlier award dated



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30.11.2021 in Arb.O.P.No.548 of 2020 vide its order dated 25.07.2022 in Arb.O.P.No.300 of 2022, this Court has also stated that it is open to the parties to raise the issue as to whether Exs.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively and other correspondence exchanged between the parties constitutes an integral part of Ex.C2 A.R.Rahman Concert Agreement dated 29.5.2019 or whether they have to be treated as separate and distinct Contract under Section 28 (3) of the Arbitration and Conciliation Act, 1996.

48. Defending the impugned Award, the learned Senior Counsel for the respondent-claimant would submit that the impugned Award of the learned Arbitrator dated 30.11.2022 is well reasoned and requires no interference.

49. It is submitted that the scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 is not attracted in this case and therefore this Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 is liable to be dismissed.



50. It is submitted that the learned Arbitrator having interpreted that the contract in Ex.C.3 – C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively based on the representation of the petitioner was linked with contract in Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019, the petitioner was not entitled to challenge the Award passed by the learned Arbitrator.

51. The learned senior counsel for the respondent-claimant would further submit that the fact that the learned Arbitrator has held Issue Nos.1 and 2 against the respondent-claimant by holding that the claimant was not entitled for a sum of Rs.50 lakhs towards breach regarding obligation in providing agreement for selling the satellite right of the Concert itself shows application of mind while passing the impugned award.

52. It is further submitted that with regard to Issue No.3, the learned Arbitrator has held that Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively form integral part of Ex.C2 A.R.Rahman



Concert Agreement dated 29.05.2019. It is submitted that if the petitioner had not promised the consideration for taking over the event, the respondent-claimant would not have definitely proceeded further without an event sponsor finalized by him under the contract. It is submitted that under these circumstances the Tribunal has answered this issue holding that Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively are integral part of ExC.2 A.R.Rahman Concert Agreement dated 29.05.2019.

53. It is submitted that with regard to Issue No.4, the Tribunal has held that Ex.C3 to C6 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019] respectively read with Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019 constitute a valid and enforceable contract in law when read with the rest of the documents and correspondence exchanged between them.

54. It is submitted that the learned Arbitrator held that Ex.C5 to C9 [dated 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively were in continuation of the promises made in Ex.C3 and C4



[dated 11.07.2019, 24.07.2019] respectively and therefore a conjoint reading of Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019, Ex. C3 letter dated 11.07.2019 and Ex.C4 letter dated 24.07.2019 respectively would establish beyond doubt that they constituted a contract legally enforceable integrally connected with each other unless the plea of coercion taken by the petitioner was established by letting in evidence.

55. It is further submitted that learned Arbitrator has further held that since the plea of coercion was taken by the petitioner, the burden was on the petitioner to prove it and there was no oral evidence proving it and held that mere pleading was not sufficient and would not replace proof as is a well settled principle in law.

56. It is submitted that with regard to Issue No.5, the learned Arbitrator held that the respondent-claimant is entitled to the sum of **Rs.2,75,10,000/-** together with interest at 18% p.a.from 17.09.2020 till 30.11.2022 and thereafter 12% p.a.fom the date of the award till the date of payment.

57. It is submitted that the learned Arbitrator has passed a well-



reasoned award and the petitioner has not made any ground which warrants interference by this Court under Section 34 of the Arbitration and Conciliation Act, 1996. Therefore, this petition is liable to be dismissed.

58. In support of the above plea, the learned Senior Counsel for the respondent-claimant has placed reliance on the following two decisions of the Hon'ble Supreme Court:-

- i) **Dyna Technologies Private Limited vs. Crompton Greaves Limited**, (2019) 20 SCC 1;
- ii) **Ameet Lalchand Shah v. Rishabh Enterprises**, (2018) 15 SCC 678

59. Having considered the submissions of the learned counsel for the petitioner and the learned senior counsel for the respondent-claimant and above discussions, I shall proceed to dispose this Original Petition.

60. The Honourable Supreme Court in **Ssangyong Engineering and Construction Co Ltd versus National Highway Authority of India**, (2019) 15 SCC 131 has held that an award can be set aside on the ground of patent illegality under section 34 (2-A) of the Arbitration And Conciliation Act, 1996 only where the illegality in the award goes to the



root of the matter. It further held that **erroneous application of law by an Arbitral Tribunal** or the re-appreciation of evidence by the court under section 34 (2-A) of the Arbitration and Conciliation Act, 1996 is not available.

61. In Ssangyong Engineering and Construction Co Ltd versus National Highway Authority of India, (2019) 15 SCC 131, the Court held that the above ground of patent illegality is available only where the view taken by the Arbitral Tribunal is an impossible view while construing the contract between the parties or where the award of the tribunal lacks any reasons. The Court further held that an award can be set aside only if an Arbitrator/Arbitral tribunal decide(s) the question beyond the contract or beyond the terms of reference or if the finding arrived by the Arbitral Tribunal is based on no evidence or ignoring vital evidence or is based on documents taken as evidence without notice to the parties.

62. That apart the scope of interference under section 34 of the Arbitration and Conciliation Act, 1996 is very limited. This Court can neither sit as a court of appeal or re-appreciate the evidence placed



before the Arbitral Tribunal or substitute the finding of the Arbitral Tribunal with its own conclusion on facts or evidence. In this connection the decision of the Honourable Supreme Court in **The Project Director, NHAI V. M. Hakim**, (2021) 9 SCC 1 is invited wherein it was held that the power to set aside an Arbitral Award under Section 34 of the Arbitration And Conciliation Act, 1996 does not include the authority to modify the award. It further held that an award can be 'set aside' only on limited grounds as specified in Section 34 of the Act and it is not an appellate provision. It further held that an application under Section 34 for setting aside an award does not entail any challenge on merits to an award.

63. The Honourable Supreme Court in **Patel Engineering Ltd V. NEEPCO**, (2020) 7 SCC 167 held that patent illegality as a ground for setting aside an award is available only if the decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at the same or the construction of the contract is such that no fair or reasonable person would take or that the view of the Arbitrator is not even a possible view.



64. The Honourable Supreme Court in **McDermott International Inc. v. Burn Standard Co. Ltd**, (2006) 11 SCC 181 held that while interpreting the terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is well within the Arbitrator's jurisdiction to consider the same.

65. The Honourable Supreme Court in **Sutlej Construction Ltd. v. UT of Chandigarh** (2018) 1 SCC 718, held that when the award is a reasoned one and the view taken is plausible, re-appreciation of evidence is not allowed while dealing with the challenge to an award under Section 34 of the Arbitration And Conciliation Act, 1996 for setting aside an award. It further held that the proceedings challenging the award cannot be treated as a first appellate court against a decree passed by a trial court

66. The Honourable Supreme Court in **Sheladia Associates Inc. V. TN Road Sector Project II, Represented by its Project Director**, 2019 SCC OnLine Mad 17883 reminded itself of the Hodgkinson principle which has been explained by the Honourable Supreme Court in the oft-quoted and celebrated Associate Builders Case being **Associate Builders V. Delhi Development Authority**, (2015) 3 SCC 49. It held



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that Hodgkinson principle in simple terms means that the Arbitral Tribunal is the best judge with regard to quality and quantity of evidence before it. It further held that if there is no infraction of Section 28(3) of the Arbitration And Conciliation Act, 1996 the question of challenge on the grounds of public policy does not arise.

67. As mentioned earlier, this is the second round of litigation before this Court under Section 34 of the Arbitration and Conciliation Act, 1996. The issues framed by the learned Arbitrator particularly principal issue in No.3 i.e. whether Ex.C.3 to C.9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively are integral part of Ex.C.2 A.R.Rahman Concert Agreement dated 29.05.2019 has been answered against the petitioner and in favour of the respondent-claimant by the learned Arbitrator.

68. The admitted facts on record shows that Ex.C3 letter dated 11.07.2019 and Ex.C4 letter dated 24.07.2019 flow from Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019:-

<i>Ex.C2 dated 29.05.2019</i>		<i>Ex.C3 dated 11.07.2019</i>		<i>Ex.C4 dated 24.07.2019</i>	
Particulars	Amount in Rs.	Particular	Amount in Rs.	Particulars	Amount in Rs.



<i>Ex.C2 dated 29.05.2019</i>		<i>Ex.C3 dated 11.07.2019</i>		<i>Ex.C4 dated 24.07.2019</i>	
Consideration agreed	3.05 crore	Consideration offered	4.25 crore	Consideration offered	4 crore
Less- Amount paid by respondent-claimant to petitioner	1.90 crore				
Balance that was to be paid	1.15 crore				

69. In Ex.C3 letter dated 11.07.2019, the petitioner decided to take over the concert that was held on 10.08.2019 at Chennai on payment of **Rs.4,25,00,000/-**. By Ex.C4 letter dated 24.07.2019, the petitioner undertook to bring title sponsors. A sum of **Rs.9,90,000/-** was paid by the petitioner to the respondent-claimant on 29.07.2019 after Ex.C4 letter dated 24.07.2019 of the petitioner to the respondent. Representation in Ex.C3 letter dated 11.07.2019 and Ex.C4 letter dated 24.07.2019 are flowing from Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019.

70. The admitted position is that the petitioner has not demanded the balance amount of **Rs.1,15,00,000/-** [Rs.3,05,00,000 - Rs.1,90,00,000] from the respondent-claimant out of **Rs.3,05,00,000/-** after receiving advance of **Rs.1,90,00,000/-**. This balance amount of



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Rs.1,15,00,000/- appears to have been adjusted from and out of **Rs.4,00,00,000/-** payable by the petitioner to the respondent-claimant from title sponsorship in terms of Ex.C4 letter dated 24.07.2019 and **Rs.9,90,000/-** paid by the petitioner to the respondent-claimant.

71. The respondent-claimant had also restricted its claim for a sum of **Rs.2,75,00,000/-** only as detailed below:-

Particulars	Amount in Rs.
Consideration in Ex.C4 letter dated 24.07.2019	4,00,00,000
Less-Balance to be paid to petitioner under Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019	1,15,00,000
Less- Amount paid by petitioner as advance under Ex.C4 letter dated 24.07.2019	9,90,000
Claim Amount	2,75,10,000

72. The aforesaid sum of **Rs.2,75,10,000/-** was demanded vide Ex.C10 dated 17.09.2020. Thus petitioner and the respondent have treated the contract in Ex.C2 and Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively are integrally connected with each other.



73. The arrangement under Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019 and the representation in Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively for title sponsorship are not two independent contracts. They are integrally connected with each other.

74. The amount payable by the respondent-claimant to the petitioner under Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019 for a sum of **Rs.1,15,00,000/-** has been adjusted from **Rs.4,00,00,000/-** and **Rs.9,90,000/-**. The petitioner has also not made a claim on the respondent-claimant for the balance amount of **Rs.1,15,00,000/-** to be paid by the respondent-claimant pursuant to Ex.C2 A.R.Rahman Concert Agreement dated 29.05.2019.

75. As far as merits of the case is concerned, I am of the view that the decision of the learned Arbitrator on a cumulative reading of Ex. C2 AR. Rahman Concert Agreement dated 29.5.2019 between the petitioner and respondent-claimant and representation of the petitioner in Ex.C3– Ex.C7 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019,



06.08.2019] respectively indicate that the transactions are integrally connected with each other. In Ex.C7 NOC dated 6.8.2019, the petitioner has specifically referred to Ex.C2 A.R Rahman Concert Agreement dated 29.5.2019.

76. It is in this background, the learned Arbitrator has come to the conclusion that the Contract in Ex.C2.R.Rahman Concert Agreement dated 29.05.2019 and the representation in Ex.C3 to C9 [dated 11.07.2019, 24.07.2019, 29.07.2019, 02.08.2019, 06.08.2019, 22.02.2020, 02.03.2020] respectively were integrally connected with each other. The conclusion arrived by the learned Arbitrator, is one of the possible conclusion and not an implausible or improbable conclusion in the given facts and circumstances of the case.

77. Therefore, the award does not suffer from any patent illegality so as to warrant a sting under section 34 (2 – A) of the Arbitration and Conciliation Act, 1996.

78. Under these circumstances, I find no justifiable reasons to interfere with the award passed by the learned Arbitrator. The present



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original petitioner is liable to be dismissed and is accordingly dismissed.

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04.06.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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C.SARAVANAN,J.

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Pre-delivery Order in

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