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C.M.A.No.664 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**  
and  
THE HON'BLE MRS. JUSTICE **K. GOVINDARAJAN THILAKAVADI**

**C.M.A. No.664 of 2024**  
**and**  
**C.M.P. No.6199 of 2024 in C.M.A. No.664 of 2024**

Shelton Motor Private Limited,  
D.No.48-9-9, Telephone Exchange Road,  
Gunadala, Vijayawada Krishna,  
Andhra Pradesh – 520 005.

.. Appellant

VS

TVS Motor Company Limited rep. by its  
Deputy General Manager – Legal K.Pradeep,  
Registered Office at  
"Chaitanya", No.12, Khadar Nawaz Khan Road,  
Nungambakkam, Chennai – 600 006.

.. Respondent

Appeal filed under Section 37(2)(b) of The Arbitration and Conciliation Act, 1996 read with Section 13 of The Commercial Courts Act, 2015 to set aside the order dated 18.12.2023 in I.A. No.3 of 2023 passed by the Arbitral Tribunal constituted vide Arbitration (Comm. Div) No.626 of 2022 and consequently direct the Arbitral Tribunal to take the appellant's Statement of Defence dated 24.07.2023 on record.



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For Appellant : Mr.Kishore Balasubramanian  
For Respondent : Mr.Vishnu Mohan  
along with  
Mr.N.Surya Narayanan

## JUDGMENT

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

This consent common order will now dispose of the captioned main 'Civil Miscellaneous Appeal' (hereinafter 'CMA' for the sake of brevity) and the captioned 'Civil Miscellaneous Petition' (hereinafter 'CMP' for the sake of brevity) thereat.

2. As this is a consent order, factual matrix in a nut shell or in other words, a thumb nail sketch of facts will suffice.

3. Short facts (shorn of elaboration) are that a Hon'ble former Judge of this Court was appointed as sole Arbitrator by Section 11 Court vide order dated 06.12.2022 made in O.P.No.626 of 2022; that this Section 11 petition was filed by 'TVS Motor Company Limited' (hereinafter 'TVS' for the sake of brevity) arraying 'Shelton Motors Private Limited' (hereinafter 'Shelton' for the sake of brevity) as respondent; that TVS and Shelton have been doing business



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from the year 2017; that TVS and Shelton entered into an 'agreement dated 01.04.2018 captioned Authorized Main Dealership Agreement' (hereinafter 'said agreement' for the sake of convenience and clarity); that in and vide said agreement, TVS appointed Shelton as main dealer at Rajahmundry to market vehicles, spare parts etc., manufactured by TVS on a non-exclusive basis; that there is an arbitration clause in said agreement; that this arbitration clause serves as arbitration agreement between the parties within the meaning of Section 2(1)(b) referred in Section 7 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity); that this agreement ran into rough weather, disputes erupted leading to filing of O.P.No.626 of 2022 by TVS; that in this O.P., Shelton did not enter appearance and resist the application; that Section 11 Court appointed a former Hon'ble Judge as sole Arbitrator; that Shelton did not carry the matter to Hon'ble Supreme Court, accepted the order and is participating in the arbitration proceedings before the sole Arbitrator who constitutes the 'Arbitral Tribunal' (hereinafter 'AT' for the sake of brevity); that AT received the 06.12.2022 order of the High Court on 16.12.2022; that Hon'ble AT sent a letter dated 19.12.2022 to both parties fixing 03.01.2023 as first sitting; that in this 03.01.2023 first sitting a Time Line Chart was drawn up; that



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according to this Time Line Chart, learned counsel for TVS should have filed 'Statement of Claims' (hereinafter 'SoC' for the sake of brevity) by 03.02.2023 but TVS ultimately filed SoC only on 08.03.2023 ; that thereafter on 05.04.2023, Shelton sought for extension of time for filing 'Statement of Defence' (hereinafter 'SoD' for the sake of brevity); that this order followed by another communication dated 12.05.2023 from Shelton i.e., communication to the Hon'ble AT saying then/erstwhile counsel for Shelton is having difficulty in getting instructions; that in the next sitting on 26.06.2023, Shelton sought further time for filing SoD; that Hon'ble AT made it clear that though it is inclined to grant time it is not doing so in the light of Section 23 (4) of A and C Act holding that the same is mandatory; that on 26.06.2023 (to be noted there is a typographical error in the impugned order and in the concluding paragraph i.e., this date '26.06.2023' has been typed as 20.06.2023), Hon'ble AT made an order saying that the right of Shelton to file SoD stands forfeited; that thereafter Shelton filed (through new/present counsel) an application (saying it is under Section 17 of A and C Act) with a prayer to recall and set aside this 26.06.2023 order; that on 18.12.2023 this application of Shelton to recall and set aside the 26.06.2023 order was negatived by Hon'ble AT; that this '18.12.2023 order made by Hon'ble AT' shall be



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referred to as 'impugned order' for the sake of convenience; that assailing the impugned order, Shelton has filed captioned CMA inter-alia invoking Section 37(2)(b) of A and C Act; that Hon'ble Predecessor Bench on 20.03.2024 admitted captioned CMA and issued notice; that Mr.Vishnu Mohan, learned counsel along with his co-counsel entered appearance on behalf of TVS; that the captioned CMA and aforementioned CMP thereat are before this Bench today.

4. This Court having captured factual matrix in a nut shell as also the trajectory the matter has taken in reaching this Court vide captioned CMA, now proceeds to say that though interesting legal issues arise i.e., interesting legal points which hitherto remain unexplored arise, considering the nature of the matter and considering how the parties are circumstanced in their respective realms, Mr.Kishore Balasubramanian, learned counsel for Shelton and Mr.Vishnu Mohan along with Mr.N.Surya Narayanan, learned counsel for TVS very fairly consented for having the SoD taken on file so that the arbitration proceedings can go on and carried to its logical end. This means that 'completion of pleadings' within the meaning of Section 29A (1) of A and C Act will happen only after SoD of Shelton is taken on record. This Court is informed by both learned counsel that the Hon'ble AT is scheduled to sit tomorrow



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(04.04.2024) at half past noon.

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5. Before we write the operative portion of this consent order, we make it clear that all legal questions including but not limited to (a) maintainability of captioned CMA more particularly under Section 37(2)(b) of A and C Act (b) legal perimeter of Section 17 of A and C Act i.e., as to whether legal landscape of Section 17 of A and C Act can take within its sweep as application in the nature of recall and set aside (c) whether sub-section (4) of Section 23 of A and C Act is mandatory or merely directory more so owing to clause (b) of Section 25 referring only the sub-section (1) of Section 23 and not sub-section (4) of Section 23.

6. One other aspect of relevance is the expression 'completion of pleadings' in Section 29A (1) of A and C Act kicked in on and from 30.08.2019 on Notification of Section 5 of Arbitration and Conciliation Act, 2019 (Act 33 of 2019) which is a amending Act and a conditional legislation. Prior to 30.08.2019, the reckoning date was not 'completion of pleadings' but it was the date on which the AT enters upon reference. The purpose of this amendment appears to be to shift the onus of the date from which one year calendar starts moving vide Section 29A of A and C Act from the AT to parties. We



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make it clear that we have only recorded the legislative trajectory for the sake of clarity and specificity as this is a consent order.

7. In the light of the narrative thus far, we make the following consent order:

7.1 The orders of Hon'ble AT dated 26.06.2023 and 18.12.2023 ordering forfeiture of the rights of Shelton to file SoD and declining the plea to recall and set aside 26.06.2023 order will stand set aside (we make it clear that the two orders are not being set aside on merits but the same are being set aside by consent solely for the purpose of enabling/facilitating the arbitration proceedings to continue and for the arbitration proceedings to be carried to its logical end);

7.2 Statement of Defence (SoD) filed by Shelton before AT (along with application to recall and set aside and documents) shall now be taken on file;



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7.3 Completion of pleadings within the meaning of Section 29A (1) of A and C Act will be tomorrow (04.04.2024) when SoD of Shelton is taken on file. This means that one year calender under Section 29A qua Hon'ble AT will start moving from tomorrow.

8. Before we conclude, it is deemed appropriate to write that Mr.Vishnu Mohan, learned counsel for TVS submits that he will file a rejoinder to the SoD of Shelton along with documents and that he will file it within three weeks from tomorrow i.e., by 25.04.2024. We request Hon'ble AT to permit TVS to file rejoinder in this manner.

9. Though obvious we make it clear that documents filed by both sides including the documents filed along with SoC, SoD and the rejoinder are also subject to proof and relevance at the discretion of Hon'ble AT and that Hon'ble AT shall decide the matter entirely on its own merits and in accordance with law at its discretion de hors this judicial order which is for the limited purpose for which it has been made as set out supra.



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10. Captioned CMA is allowed in the aforementioned manner.

Consequently, captioned CMP is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)  
03.04.2024

Index : Yes / No

Neutral Citation : Yes / No

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**P.S. I:** *Upload forthwith*

**P.S.II :** *All concerned to act on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.*

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**and**

**C.M.P. No.6199 of 2024 in C.M.A. No.664 of 2024**

**M.SUNDAR,J.,**

**and**

**K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by M.SUNDAR, J.)

Captioned matter was disposed of by this Court by an order dated 03.04.2024, order was uploaded on 04.04.2024 and a scanned reproduction of the uploaded version is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS  
Dated: 05.04.2024  
Coram  
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and  
THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI  
C.M.A. No.664 of 2024  
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Sheton Motor Private Limited,  
D.No.48-9-9, Telephone Exchange Road,  
Gundala, Vijayawada Krishna,  
Andhra Pradesh - 520 005. Appellant

vs.

TWS Moon Company Limited, rep. by its  
Deputy General Manager - Daniel K.Pradeep,  
Registered Office at:  
"Chaitanya", No.12, Khadar Nawaz Khan Road,  
Nungambakkam, Chennai - 600 006. Respondent

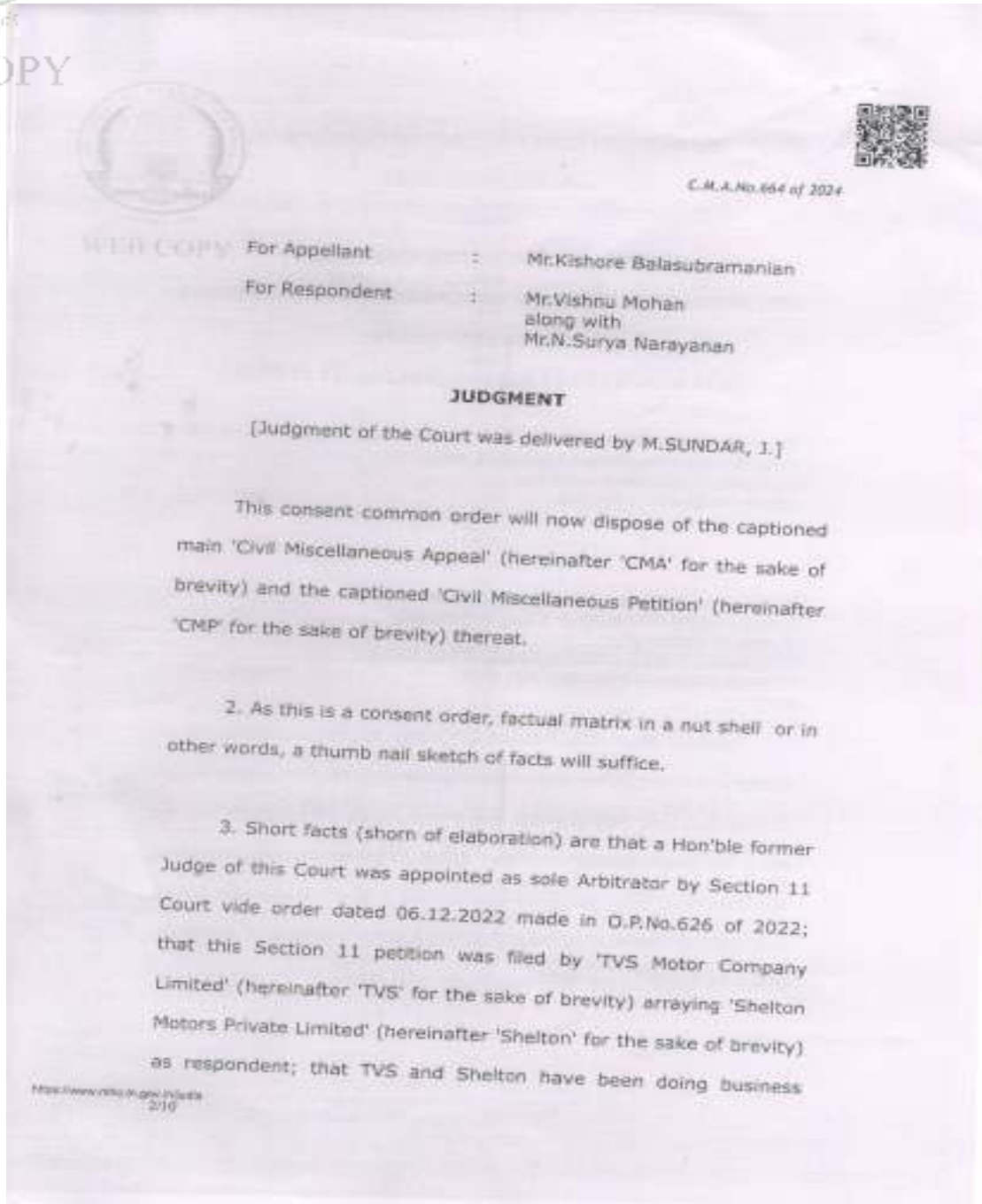
Appeal filed under Section 37(2)(c) of the Arbitration and  
Conciliation Act, 1996 read with Section 15 of The Commercial  
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No.3 of 2023 passed by the Arbitral Tribunal constituted vide  
Arbitration (Comm. Div) No 526 of 2022 and consequently direct  
the Arbitral Tribunal to take the Appellant's Statement of Defence  
dated 24.07.2023 on record.

For Petitioner, M.Sundar  
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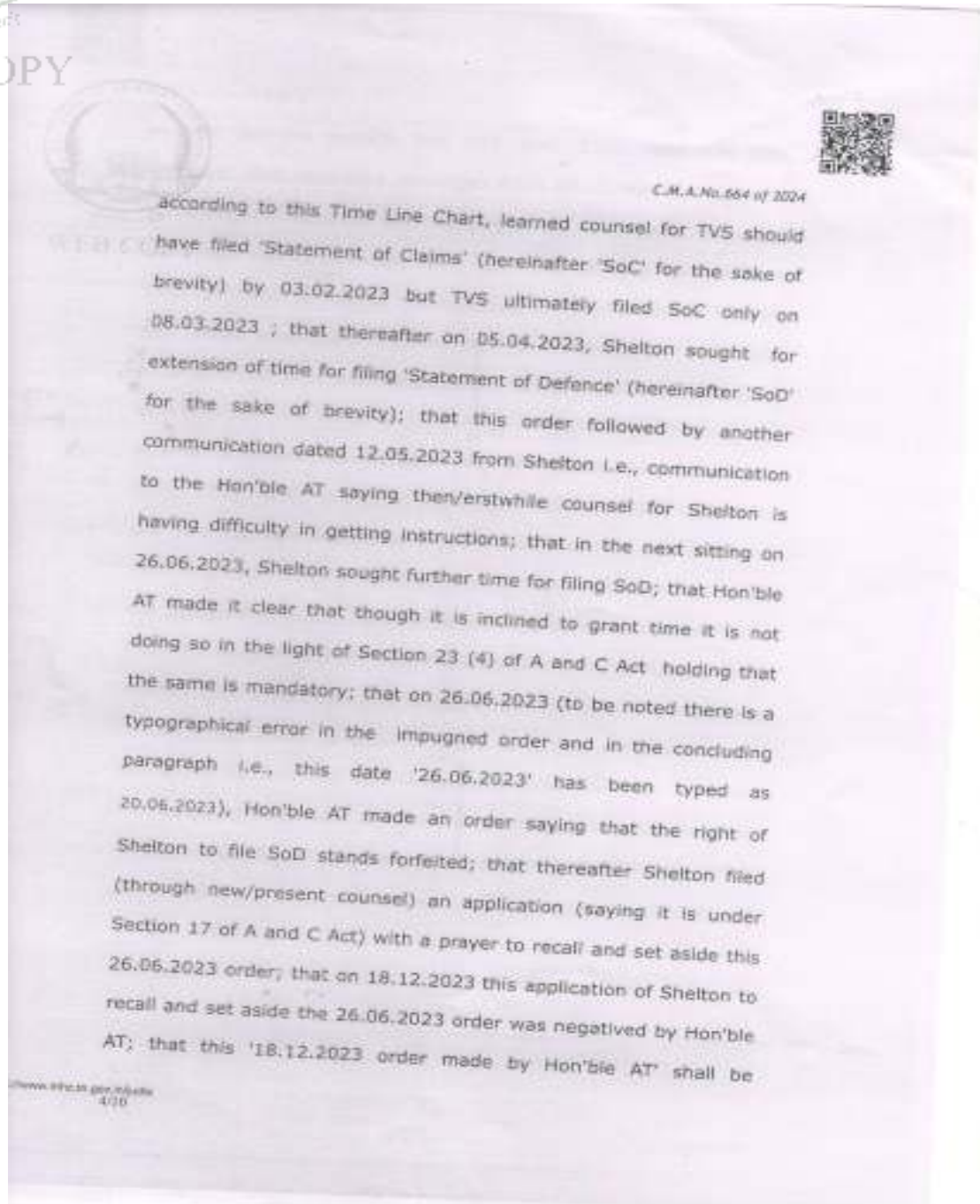
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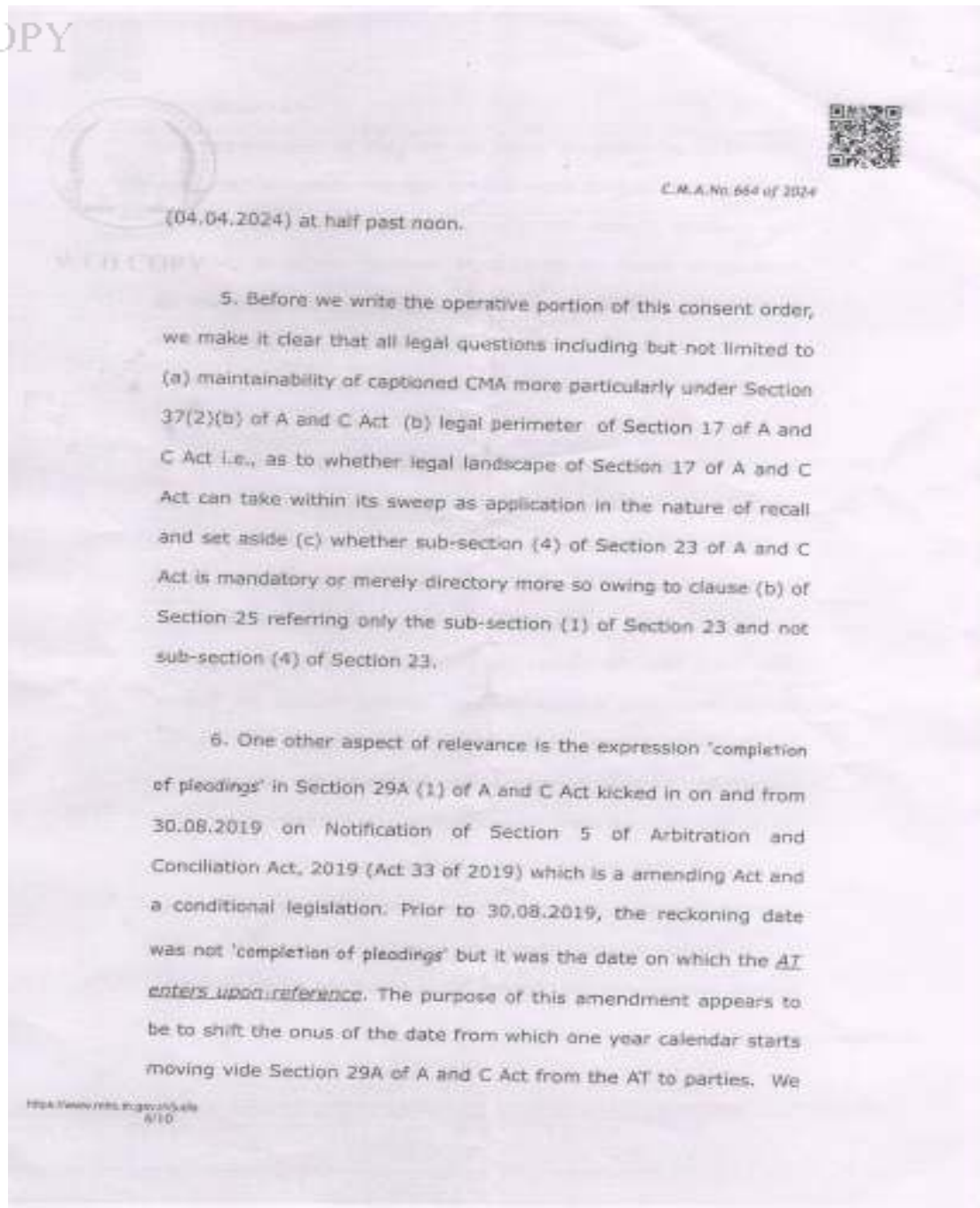
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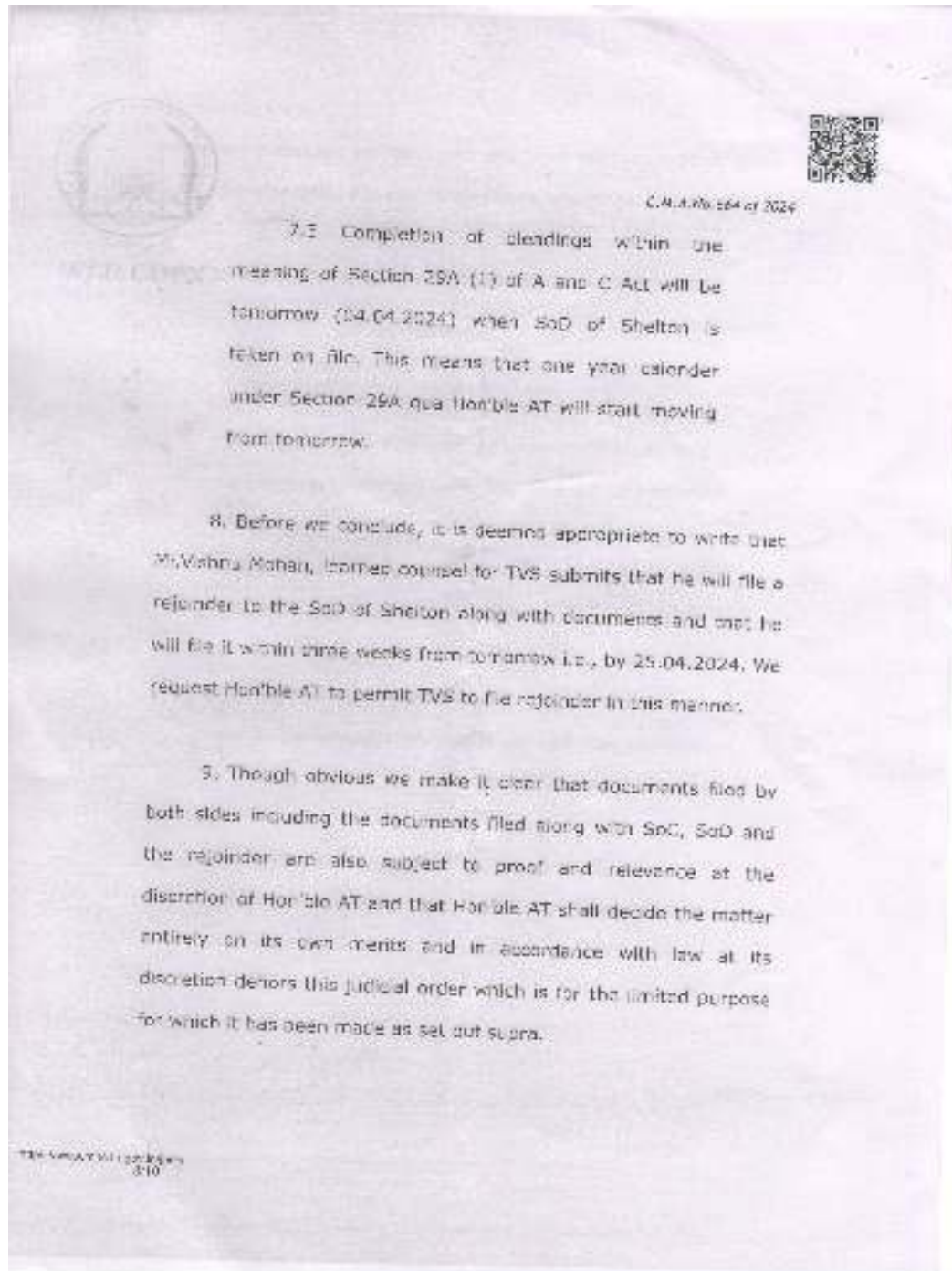
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2. Today, Mr.Kishore Balasubramanian, learned counsel for appellant and Mr.Vishnu Mohan along with Mr.N.Surya Narayanan, learned counsel for the respondent mentioned the matter at half past ten and both learned counsel submitted that a minor typographical error has crept in qua paragraphs 5 and 6 of the order. At the request of both counsel, matter was listed under the cause list caption 'FOR BEING MENTIONED' by way of an Additional



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List and a scanned reproduction of the Additional List is as follows:

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THE HON'BLE MR. JUSTICE S. SURYA  
AND  
THE HON'BLE MR. JUSTICE S. GOVINDARAJAN THELAKKOTTAI

TO BE HEARD THROUGH VIDEO CONFERENCE / PHYSICAL COURT / HYBRID MODE  
ON FRIDAY THE 17TH DAY OF APRIL 2024 - ADDITIONAL LIST  
WORTH MT. 00

THE APPOINTMENT OF PERSONS ARE SUBMITTED

1. TO VISUAL INTERVIEW FROM THE APPLICANTS OR THEIR REPRESENTATIVES / FIRM /  
SINGLE PERSON AND TO JOIN THE COURT VC SESSION (WHICH)

2. TO APPEAR FOR THE COURT AND BEAR WITHAL TO THE COURT

3. TO PROVIDE PROPER EVIDENCE

4. TO BEAR WITHAL AND BEAR WITHAL IN IN AGREEMENT, TO BEAR UNBARRED WITHAL  
EVIDENCE THROUGH THE VIDEO CONFERENCE AND BEAR THE WIC DLS AT THE TIME OF  
THEIR APPEARANCE

5. COURT LINK ALSO AVAILABLE AT  
<https://www.mhc.tn.gov.in/judis>

FOR BEING SUBMITTED

|                 |                                                |                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. UBA/11/11111 | SHRI R. SURESH P.V. LTD<br>FOR BEING SUBMITTED | MR. SURESH BALASUBRAMANIAN<br>THAKUR SUBRAMANIAN<br>MR. SURESH MOHAN, LEARNED COUNSEL,<br>WHILE SUBMIT TO THE COURT<br>INSTRUCTIONS OF APPEAR FOR THE COURT<br>APPEARANCE FROM 11/11/2024<br>AND BEAR WITHAL TO THE COURT<br>AND BEAR WITHAL IN IN AGREEMENT<br>THAKUR SURESH, S. SURESH<br>MR. P. S. SURESH, MR. S. SURESH<br>MR. S. SURESH, MR. S. SURESH<br>MR. S. SURESH, MR. S. SURESH |
| 2. UBA/11/11111 | SHRI R. SURESH P.V. LTD<br>FOR BEING SUBMITTED | MR. SURESH BALASUBRAMANIAN<br>THAKUR SUBRAMANIAN<br>MR. SURESH MOHAN, LEARNED COUNSEL,<br>WHILE SUBMIT TO THE COURT<br>INSTRUCTIONS OF APPEAR FOR THE COURT<br>APPEARANCE FROM 11/11/2024<br>AND BEAR WITHAL TO THE COURT<br>AND BEAR WITHAL IN IN AGREEMENT<br>THAKUR SURESH, S. SURESH<br>MR. P. S. SURESH, MR. S. SURESH<br>MR. S. SURESH, MR. S. SURESH<br>MR. S. SURESH, MR. S. SURESH |

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MR. SURESH BALASUBRAMANIAN  
THAKUR SUBRAMANIAN

3. When the matter was taken up i.e., when the Additional List was taken up, Mr.Kishore Balasubramanian was before us in the physical Court, Mr.Vishnu Mohan was before us in the VC (video conferencing) platform and Mr.N.Surya Narayanan assisting him was before us in the physical Court. To be noted, this is a hybrid hearing which is a regular/routine/daily feature in this Court.



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4. Be that as it may, both learned counsel submitted that the typographical error is in paragraphs 5 and 6. To be noted, in paragraph 5, it was made clear that all legal questions were left open as it is a consent order. The 'left open' part has not been typed, that is the minor error and both sides requested for correction of the same.

5. Now with the consent of learned counsel on both sides, in paragraph 5 of the aforementioned order dated 03.04.2024, the corrections have been carried out and corrected paragraph 5 will now read as follows:

*'5. Before we write the operative portion of this consent order, we make it clear that all legal questions including but not limited to (a) maintainability of captioned CMA more particularly under Section 37(2)(b) of A and C Act (b) legal perimeter of Section 17 of A and C Act i.e., as to whether legal landscape of Section 17 of A and C Act can take within its sweep as application in the nature of recall/ set aside and (c)*





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

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**C.M.A. No.664 of 2024**

**05.04.2024**