



WEB COPY



OSA (CAD) NO.98 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

OSA (CAD) NO.98 OF 2022

S.N.Sridharan

M/s.Ajitha Gas Agency

(Now a partner)

No.21, Dr.Ambedkar Salai,

North Thirumalai Nagar, Villivakkam,

Chennai – 600 049.

... Appellant

VS.

1.M/s.Indian Oil Corporation Ltd.,

Rep. By its Executive Director

Tamil Nadu State Office

Indian Oil Bhavan

No.139, Nungambakkam High Road,

Chennai – 600 034.

2.M/s.Indian Oil Corporation Ltd.,

Rep. By its Chief Area Manager

Chennai Area Office

No.500, Anna Salai,

Chennai – 600 018.

... Respondents



OSA(CAD) NO.98 OF 2022

PRAYER: Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Section 37(1)(B) of the Arbitration and Conciliation Act, 1996 read with Section 13(1A) of the Commercial Courts Act, 2015, to set aside the order and decretal order dated 31.08.2021 on the file of this Court made in O.P.No.299 of 2020.

For Appellant : Mr.Gautam S. Raman
For Respondents : Mr.V.Anantha Natarajan

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

This appeal is under Section 37 of the Arbitration and Conciliation Act, 1996.

2.The only grievance of the appellant is that the Section 34 Court while setting aside the Award for damages on the ground that there was no prayer for damages, had gone into the merits of the matter and had opined that the findings of the Arbitrator regarding the termination of the agreement are also incorrect. The dispute was one based on termination of a Dealership Agreement between the appellant and the respondent Corporation. The Arbitrator had found that the termination of the



Dealership agreement was vitiated by *malafide* and whimsical action on

the part of the Corporation. As a sequitur to the said findings, the

Arbitrator went again to award damages. This Award was principally set

aside by the Section 34 Court on the ground that it is in excess of the

powers of the Arbitrator. However, while examining the correctness of the

Award, the Hon'ble Judge re-appraised the evidence and arrived at a

conclusion that the termination is proper.

3. We do not think such an exercise is permitted under Section

34 of the Arbitration and Conciliation Act, 1996. However, now that the

Award has been set aside on a valid ground, we do not propose to interfere

in the appeal except to observe that if the appellant seeks re-arbitration, the

observations made in the order of the Section 34 Court or in the Award of

the Arbitrator, will have any bearing and the new Arbitrator who is to be

appointed will examine the issue without being influenced by any of the

observations contained in the Award of the Arbitrator or the order of the

Section 34.



OSA (CAD) NO.98 OF 2022

4.The Original Side Appeal is dismissed with the above

observation. No costs.

[R.S.M., J.]

[R.S.V., J.]

12.01.2024

Index : No

Internet : Yes

Neutral Citation : No

Speaking Order

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OSA (CAD) NO.98 OF 2022

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

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OSA (CAD) NO.98 OF 2022

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