



C.M.A.No.778 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH.,J

C.M.A.No.778 of 2024
and CMP No.7236 of 2024

M/s.Appstars Applications Pvt. Ltd.,
Represented by its Managing Director,
Mr.Kameshwaran Elangovan
having its registered office at 8th Floor,
Prestige Polygon
471, Annasalai,
Nandanam, Chennai 600 035

..Appellants/
Respondent

Vs.

M/s.Smartworks Coworking Spaces P Ltd.,
Represented by its Managing Director,
Mr.Neetish Sarda
Having its office at
Unit No.305-310, Plot No.8, 10 &11
Vardhman Trade Centre
Nehru Place, New Delhi -110 019

..Respondent /
Applicant

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1(U) of the CPC to setaside the order dated 01.02.2024 made by the learned Arbitral Tribunal in Application No.1 of 2024.



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For Petitioner : Mr.K.P.Sathish Kumar
For Respondent : Mr.R.Bharath Kumar
for Caveator

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed challenging the interim order passed by the Sole Arbitrator dated 01.02.2024, eschewing the evidence of RW1.

2. Heard Mr.K.P.Sathish Kumar, learned counsel for appellant and Mr.R.Bharath Kumar, learned counsel for Caveator.

3. The respondent filed an application before the Sole Arbitrator to eschew the evidence of RW1 by assigning certain reasons. This application was contested by the appellant on the ground that certain crucial answers have been extracted from RW1 in favour of the appellant and therefore, in order to deprive the appellant, the answers that were elicited from the witness, the application was filed by the respondent to eschew the evidence of RW1.



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4. The sole arbitrator on considering the plea raised on both sides, came to a conclusion that there are difficulties expressed by the respondent in producing the witness and therefore, further evidence could not be recorded from the witness. In view of the same, the sole Arbitrator came to a conclusion that evidence of RW1 can be eschewed. While passing this order, the Sole Arbitrator has also made it clear that the application is allowed without prejudice to the contention of the appellant to raise all the issues at the time of final hearing and that the same will be considered on its own merits and in accordance with law.

5. The short issue that arises for consideration is as to whether the appeal is maintainable against the interim order passed by the Sole Arbitrator, under Section 37 (2) of the Arbitration and Conciliation Act, 1996 [For short, the Act].

6. The issue involved is no longer *res integra* and it is



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squarely covered by the judgement of the Apex Court in **[Amazon.com NV Investment Holdings LLC Vs. Future Retail Limited and others]** reported in **LL 2021 SC 357**. The relevant portions in the judgement are extracted hereunder :-

95. *At this juncture, it is important to notice that [Section 37](#) did not remain untouched by the 2015 Amendment Act. As a matter of fact, a new category of appeals was infused into the said provision by adding a new sub-section (1)(a), which reads as follows:*

"37. Appealable orders.—(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(a) refusing to refer the parties to arbitration under [Section 8](#);" *

** **

96. *Despite [Section 17](#) being amended by the same Amendment Act, by making [Section 17\(1\)](#) the mirror image of [Section 9\(1\)](#) as to the interim measures that can be made, and by adding [Section 17\(2\)](#) as a consequence thereof, significantly, no change was made in [Section 37\(2\)](#) (b) to bring it in line with Order XLIII, Rule 1(r). The said Section continued to provide appeals only*



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from an order granting or refusing to grant any interim measure under [Section 17](#). There can be no doubt that granting or refusing to grant any interim measure under [Section 17](#) would only refer to the grant or non-grant of interim measures under [Section 17\(1\)\(i\)](#) and [17\(1\)](#)

(ii). In fact, the opening words of [Section 17\(2\)](#), namely, “subject to any orders passed in appeal under [Section 37](#)...” also demonstrates the legislature’s understanding that orders that are passed in an appeal under [Section 37](#) are relatable only to [Section 17\(1\)](#). For example, an appeal against an order refusing an injunction may be allowed, in which case sub- section (2) of [Section 17](#) then kicks in to enforce the order passed in appeal. Also, the legislature made no amendment to the granting or refusing to grant any measure under [Section 9](#) to bring it in line with Order XLIII, Rule 1(r), under [Section 37\(1\)\(b\)](#).

7. It is clear from the above judgement that in order to maintain an appeal under Section 37, the order passed by the Arbitration Tribunal must come within any of the clauses under Section 37 (2) of the Act. If it does not come within any of those clause, the only option that is left to the aggrieved party is to



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question that interim order also at the time of challenging the final award. In fact, the sole Arbitrator has also specifically stated so in the interim order itself that the application is ordered without prejudice to the rights of the appellant to raise the issue at the time of final hearing.

8. In the instant case, the interim order that was passed by the Arbitrator does not come within the scope of Section 37(2) of the Act. Therefore, there is no question of maintaining the present appeal.

9. In the light of the above discussion, apart from reiterating whatever was stated by the Sole Arbitrator in Paragraph 14 of the Interim order to the effect that it will be left open to the appellant to raise all the issues at the time of final arguments, no further orders can be passed in this appeal.



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10. This Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, the connected Civil Miscellaneous petition is closed.

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Index: Yes/No
Internet:Yes/No
Speaking order/Non-Speaking Order



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