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**A.No.2848 of 2024**

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**RESERVED ON**  
**27.08.2024**

**PRONOUNCED ON**  
**03.10.2024**

**K.KUMARESH BABU,J.**

This Application had been taken out for the relief pursuant to the order of the learned Arbitrator permitting the applicant to apply to this Court to summon the named person to appear and to adduce evidence before the Arbitral Tribunal.

2. Heard Mr.P.S.Vasanthkumar, learned counsel for the applicant and Mr.D.Prabhu Mukunth Arun Kumar, learned counsel appearing on behalf of the first respondent.

3.The learned counsel appearing on behalf of the first respondent would vehemently contend that the said Bharathi Raja was made as a party to the Section 11 application. But, however, while ordering the appointment of an Arbitrator, this Court necessarily had held that the said Bharathi Raja who was shown as the second respondent was not a necessary party and therefore, he would contend that when he is not a necessary party, he cannot be called as a witness to the proceedings. He would also submit that the



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evidence of Mr.Bharathi Raja will not be helpful to the arbitral proceedings that is now pending between the parties. These Applications had been taken out by the applicant only to prolong the arbitral proceedings. He had also submitted that at first the examination and summoning of the said Bharathi Raja cannot substantiate the TDS payments which had been made into PAN account of the first respondent.

4. I have considered the submission made by the learned counsel appearing for the first respondent and also perused the order made by the learned Arbitrator in permitting the applicant to approach this Court.

5. The learned Arbitrator had held that Ex.A3, Agreement dated 01.03.2012 and A5 series – invoices, R4 series invoices and R5(11) cash vouchers and R3-full and final settlement dated 23.02.2013 relied upon by both the parties were signed by the said K.Bharathi Raja, who is the second respondent herein. Hence, it was necessary to examine the said Bharathi Raja and therefore, the learned Arbitrator had granted approval.



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6. This statement recorded by the learned Arbitrator had not been contraverted by the first respondent either in its counter or in the oral submission made before this Court. In the contrary, had contended that when the said Bharathi Raja was held not to be a necessary party, also cannot be a necessary witness to be examined. On the reasons adduced by the learned Arbitrator for summoning of the second respondent to be examined as a witness, I am not able to appreciate the arguments made by the first respondent in contesting these application. A person may not be a necessary party to a proceedings and the reasons adduced that holding him to be not a necessary party cannot be applied to not summon the very same party as a witness to the arbitration proceedings. The learned Arbitrator had categorically given a finding that the said second respondent herein is a signatory to various documents relied upon by both the applicant as well as the respondent.

7. In such view of the matter, I am inclined to allow this application as prayed for. The sole Arbitrator is permitted to summon the second respondent herein to depose evidence in the claim petition pending before him and on receipt of the summons from the



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learned Arbitrator, the second respondent is directed to appear before him on the date fixed by the learned Arbitrator and depose evidence.

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3. In the light of the aforesaid observations, the application is ordered as prayed for.

Gba

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Index : Yes/ No

Speaking/ Non-speaking order

Neutral Citation : Yes/ No

**K.KUMARESH BABU,J.**

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