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C.M.P.No.28875 of 2023

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in
OSA(CAD).No.88 of 2023

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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

The prayer in the petition runs as follows:-

"Permit the applicant to participate in the Audit that was being conducted by R.Subramanian and Company LLP, Chennai and consequently direct the said Audit Firm appointed by this Hon'ble Court to consider the representation of the applicant and thereafter either file a revised report or additional report as the case may be."

2.Heard Mr.P.V.Balasubramaniam, learned Senior Counsel appearing for Mrs.Narmadha Sampath, learned counsel for the appellant and Mr.P.S.Raman, learned Senior Counsel appearing for M/s.ARK Law Associates for the respondents.

3.The grievance of the petitioner is that the Auditors appointed by this Court in a proceeding under Section 9 have filed a report even before the petitioner could get the documents, which were in the exclusive custody



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of the respondents thereby, denying a sufficient opportunity or a fair opportunity to the petitioner. The petitioner therefore, prays that the Auditor should be directed to consider the representation of the petitioner and thereafter, file a revised report.

4.Mr.P.V.Balasubramaniam, learned Senior Counsel would vehemently contend that the Auditors were not justified in rejecting the request of the petitioner for copies of documents on the ground that they would be breaching the rules of the Institute of Chartered Accountants of India as the documents that are produced by the respondents before the Auditors would amount to a privileged communication itself is on a wrong premise. The learned counsel would submit that since the Auditors are Court appointed Auditors, the question of breaching the rules of the Institute of Chartered Accountants of India does not arise and therefore, the failure on the part of the Auditors to furnish copies of the documents to the petitioner is flawed.

5.Mr.P.S.Raman, learned Senior Counsel for the respondents would submit that the report of the Auditors has been placed before us and arbitration proceedings have also commenced. The Arbitrators are three



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former Chief Justices of India. If at all the petitioner is aggrieved, he can move the panel of Arbitrators under Section 17 of the Arbitration and Conciliation Act. He would also submit that the report of the Auditors is not final and it is always open to the petitioner to place evidence before the Arbitrators to show that the report of the Auditors is not correct. He would also add that certain documents that are sought have now been furnished. We have considered the rival submissions.

6.We find that the first course of action suggested by Mr.P.S.Raman would be more appropriate in the circumstances. This appeal itself is against a proceeding under Section 9, which operates within a very limited scope. Once arbitration proceedings have commenced, the jurisdiction of the Court to pass orders under Section 9 is very very limited and matters which fall within the jurisdiction of the Arbitrators under Section 17 must be left to the wisdom of the Arbitrators. Section 9(3) of the Arbitration and Conciliation Act as amended would also stand in the way.

7.Hence, this petition is dismissed with liberty to the petitioner to move the Arbitrators under Section 17 of the Act. We direct the Registry to forward the report to the Auditors to the Arbitrators.



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8.We are also informed that an application seeking forensic audit filed under Section 9 is transmitted to the Arbitrators to be decided under Section 17. This order is without prejudice to that contentions of the parties in that proceeding.

(R.S.M.,J.) (R.S.V.,J.)
04.01.2024

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