



O.S.A.No.178 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 11.11.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

O.S.A.No.178 of 2020
and CMP Nos.9059 and 9060 of 2020

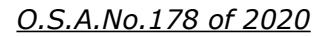
1. N.S.Ramachandran
2. R.Gowri Shankar

.... Appellants

V.

1. R.Sridharan
2. M.ThambiThurai (Arbitrator)
No.23, Kacheri Road,
Mylapore, Chennai – 600 004.
3. M.Ramachandran (Arbitrator)
Ganesh Nagar,
Brindavan Nagar, Chennai – 600 088.
4. Mr.D.Sivakumar (Arbitrator)
Plot No.142, 5th Main Road,
A.G.S. Colony, Velacherry,
Chennai – 600 042.

.... Respondents



For Appellants :Mr.K.V.Ananthakrushnan

JUDGMENT

This Original Side Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Act, 1996') is directed against the order, dated 25.11.2019 made in O.P.No.180 of 2012 passed by the learned Single Judge of this Court in an application under Section 34 of Act, 1996.

2. M/s.N.S.Ramachandran, the 1st appellant is the father of R.Gowri Shankar and R.Sridharan, the 2nd appellant and 1st respondent respectively. They entered into an Agreement, dated 16.03.2010 for division of their



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properties both movable and immovable situated at Chennai and Salem.

Accordingly, in terms of the said agreement the respondents 2 to 4 were appointed as Mediators/Arbitrators.

3. The Arbitral Tribunal had commenced the proceedings and on the verge of pronouncing the award, one of the Arbitrator by name Mr.D.K.Sivakumar on his transfer from Chennai to Kancheepuram, had informed the other two Arbitrators to proceed with the arbitration proceedings in his absence and he retires from the Tribunal for the reasons stated.

4. This communication dated 24.10.2010 been discussed in the meeting of the Arbitrators and the proceedings also minutised. Award was passed on 07.11.2010 unanimously by two of the Arbitrators recording the resignation of the other Arbitrator. Thus, the majority view of the Arbitrator been substantially acted upon by the appellants herein.

5. Pursuant to the award, a sum of Rs.1,85,000/- has been sent to the younger son Mr.Sridharan, 1st respondent. However, he did not accept the money, returned the same and challenged the award before the learned single Judge under Section 34 of the Arbitration and Conciliation Act, 1996



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primarily on the ground that on resignation of one of the Arbitrator by name Mr.D.K.Sivakumar, the three member Arbitral Tribunal constituted as per agreement dated 16.03.2010 ought not to have proceeded further without re-constitution of Arbitral Tribunal by filling up the vacancy. However, the remaining two members of the Arbitral Tribunal constituting even number had proceeded to pronounce the award which is contrary to the mandate contemplated under Section 10 of the Act.

6. Apart from the above said ground, there is personal allegation against one of the Arbitrator attributing personal bias. The apportionment of the share among the claimants also faulted, hence, sought for interference under Section 34 of the Act.

7. The learned single Judge after hearing the parties, allowed the Original Petition holding that the composition of the Arbitral Tribunal on the date of pronouncing the award was not in accordance with the agreement, thus violation of Section 34(2)(a)(v) of the Act is made out, the award is liable to be set aside.

8. The intra-Court appeal under Section 37 of the Act is by the father and the elder son stating that the challenge to the award passed by the



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majority is not sustainable and the learned single Judge without considering the spirit of the Act as spoken in Sections 10 and 29 read with Section 31 of the Act set aside the award holding that the award is in violation of Section 34(2)(a)(v) of the Act.

9. Learned counsel for the appellant relying upon the judgment of the Delhi High Court rendered in *Cimmco Ltd. V. Union of India* (2019 SCC Online Del 7655) which was even referred to before the learned single Judge but distinguished on facts, submitted that the withdrawal of the third Arbitrator at the fag end of pronouncement of the award will not vitiate the award since from the date of resignation to the date of award there was no further deliberation in respect of the dispute and as in *Cimmco Ltd.* case the earlier meetings and minutes recorded by the Arbitrators substantially indicate the conclusion of the dispute even before the resignation of the third Arbitrator by name Mr.D.K.Sivakumar.

10. The dictum of *Cimmco Ltd.* squarely applies to this case. Even otherwise, the common law principle of rule of majority ought to have been applied and after deliberation when majority of the Arbitrator had pronounced the award and there is no perversity or violation of public



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policy involved in the award, the learned single Judge ought not to have interfered with the award.

11. In the course of the arguments certain other facts had come to light, particularly the first respondent herein not pleased with the award in respect of the valuation of the property and the manner in which the passage allotted to the appellants herein to have access to their portion of the property situated in Chennai.

12. In this regard, learned counsel appearing for the first respondent submitted that the valuation report was not placed before Mr.D.K.Sivakumar, resigned Arbitrator and the physical inspection of the property was not made by him. He referred to the minutes of the Arbitrators to support his submissions.

13. Per contra, learned counsel appearing for the appellants submitted that the Arbitrators had discussed the entire issue which form part of the reasoning in the award, the resignation of Mr.D.K.Sivakumar was only on 24.10.2010, two weeks prior to pronouncing of the award. In fact, on 17.10.2010, Mr.D.K.Sivakumar was informed over phone for the meeting scheduled to be held on 24.10.2010 for pronouncing the award, for



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which he replied that he would confirm in two days. Only after that he had resigned from the Arbitral Tribunal citing his transfer. Thus, it is to presumed that the award was ready as early as on 17.10.2010 and his participation for pronouncing the award was due to the inevitable reason stated in his resignation letter.

14. On the factual side, the only controversy is in respect of the private passage earmarked in the Award for the exclusive usage of the second petitioner in the Chennai property. The first respondent is claiming access through the said passage and also to park his car in the said passage. According to the second petitioner, if cars are parked in the said passage, the passage will be blocked and thus appears to be serious dispute in that connection earlier. In respect of all other properties there is no serious dispute and all the petitioners are enjoying the respective properties allotted in terms of the Award.

15. During the course of hearing, since the law involved in this matter is very interesting and also of very importance in matters under the Arbitration and Conciliation Act, learned Senior Counsels present in the Court had voluntarily participated in the proceedings and has assisted the



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Court furnishing some of the judgments rendered by the Supreme Court and

High Courts, particularly the recent judgment of the Delhi High Court in

ISC Projects Private Limited V. Steel Authority of India Limited

(O.M.P.(Comm) 370/2021, I.A.17061/2021 & I.A.9346/2022 dated 21.02.2025).

16. Though the aforesaid decision of the Delhi High Court is by the learned single Judge, having covered the law and the precedents extensively, the same been relied even by the learned counsel appearing for the first respondent. For the sake of brevity, the basic principle which has been culled out by the learned single Judge for the issue in hand are conceptualized as under:

- I. It is the award of the majority alone that constitutes an arbitral award; the opinion of a dissenting arbitrator is not an “award” at all.*
- II. Signatures of all members of the arbitral tribunal should be available on the award. The signing of an award is not a ministerial act, but a substantive requirement.*
- III. If the signature of any member of the tribunal is omitted, the reasons should be stated. However, the reasons can be supplied separately and subsequently.*
- IV. The requirement is referable to the need to ensure that all members of the tribunal have had an opportunity to participate in the*



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decision-making process. This requires the Court to consider the reasons apparent from the record, to satisfy itself that the reasons are relevant, germane and adequate.

V. While a dissenting opinion has no direct legal effect, it is also not wholly meaningless or irrelevant. The expression of a dissent is part of the adjudicatory mandate of the arbitrator, it forms part of the duty to give reasons, which is enshrined in the Act, constitutes a safeguard against arbitrary and unchecked decision-making, and can be used by the aggrieved party as well as the Court in the course of a challenge to the majority award.'

17. The citations placed before this Court also substantially support the principle that in any case when any member of Arbitral Tribunal not available to sign, the award will not become vitiated if reason is provided for his absence and not signing the award.

18. The third principle propounded by the Delhi High Court in *ISC Projects Private Limited* (supra) indicates that if the signature of any member of the Tribunal is omitted, the reason should be stated. The reason can also be supplied separately and subsequently. This principle is culled out by the learned single Judge from the dictum laid in *M/s.Chandok Machineris V. M/s.S.N.Sunderson & Co.* ((2018) SCC Online Del 12782 (DB).



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19. This Court is conscious of the fact that under Section 37 of the Act or for that matter under Section 34 of the Act, the award of the Arbitrator can be interfered with only if it falls within the parameters prescribed under Section 34 and not otherwise.

20. In this case, the learned single Judge has concluded that the award of the Tribunal is violative of Section 34(2)(a)(v) of the Act, since in his view, the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties.

21. No doubt, the impugned award was passed in the absence of one of the Arbitrator who suddenly resigned two weeks prior to pronouncing the award. The reason for his resignation is well found from his letter written in his own handwriting. This letter dated 24.10.2010 addressed to the parties indicates that he is not in a position to bestow attention in the matter, since he has been transferred to Kancheepuram.

22. Before addressing to the parties, we find from the minutes that he has informed the other Arbitrators over phone on 17.10.2010 of his intention to resign. Two days prior to that, he had informed the Arbitrators that he will let the Arbitrators know of his convenience to join them and



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pronounce the award on 24.10.2010.

WEB COPY 23. This communication of the resigned Arbitrator Mr.D.K.Sivakumar read in toto with the minutes of the Arbitrators would show that on 17.10.2010 the draft award or the decision of the Arbitrators been arrived at and tentatively fixed 24.10.2010 as the date for pronouncing the award. Only thereafter, the said Mr.D.K.Sivakumar had resigned.

24. The allocation of the pathway which appears to be the bone of contention among the parties also form part of the discussion and minutes of the Arbitrators in which all the three Arbitrators were parties. Therefore, the composition of the Arbitral Tribunal as agreed had acted upon and completed their proceedings except pronouncing of the award on 24.10.2010. Except the dispute with regard to the passage in respect of the property situated at Chennai, all the parties have acted upon the Award in question.

25. The resignation of one of the Arbitrators and the absence of his signature in the award has to be viewed from the facts narrated above to see whether it will completely vitiate the award or it has to be taken as view of majority.



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26. In *Hindustan Construction Company Limited V. National*

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Highways Authority of India ((2024) 2 SCC 613), the Hon'ble Supreme Court while considering a dissent opinion in an arbitral award had categorically held that it cannot be a substitute to a majority view, it has to be said as an opinion and not as an authority even if the view of the majority is set aside.

27. In other words, it means that the view of the majority has to stand or fall on its own merit, the opinion of the minority, whether expressly made or by abstaining from signing the award after completing the arbitral proceedings sans pronouncing of the award, the test to be applied is not whether the composition of the Arbitral Tribunal was in consonance with the agreement throughout the proceedings or there was some lapse at the fag end of pronouncing the award.

28. We should also look whether the award of the majority when the opinion of the minority or signature tantamount to violation of public policy. If there is no such violation, by pedantic approach of certain provisions, a well considered award passed by the majority in unanimous cannot be set aside.



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29. In this case, we also hasten to record that the dispute is between the father and son. The Arbitrators had taken efforts to substantially resolve the dispute and had passed the award in all fairness and good faith. They have also expressed their apprehension regarding the claim of the first respondent to have a share in the pathway.

30. We find that the subsequent events and incidents had proved their apprehension true. Regarding the usage of pathway, the parties have gone to police station and also fighting for it. Though the said observation is not relevant for our decision, we are forced to record it because if we have taken a pedantic view and say that the award is vitiated due to non-participation of one of the Arbitrators on the date of pronouncing the award, it should be hyper technical and go against the spirit of the Act which envisages amicable settlement between the parties without going through the rigour of judicial process.

31. Hence, even on that score, to sustain the public policy, the award of the Tribunal is to be upheld and the order of the learned single Judge has to be set aside. Accordingly, the impugned order of the learned single Judge is set aside and this Original Side Appeal is allowed. No costs.



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Connected Miscellaneous Petitions are closed.

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32. After dictating the above order, Mr.T.M.Hariharan, learned counsel appearing for the 1st respondent made a request to allow access for the 1st respondent to use the private passage earmarked for 2nd appellant in Chennai property only for the purpose of reaching the rear side parking area of 1st respondent's house, to put an end to the dispute once for all. We also found that the core dispute between the parties is regarding the usage of the passage to take the car of the 1st respondent to the rear side of his house situated at Chennai and to park in at the rear side of his building. We are of the view that the access to passage to park the car of the first respondent in his property which is on the rear side of his building can be allowed. However, the said right of passage should be restricted only as an access to go to the rear side of his (1st respondent) property, marked as 'B' portion and should not be construed as a right to park the car in the passage, in any manner obstructing ingress and egress of the appellants to their property, marked as 'C' portion. The learned counsel for the appellant also did not raise any serious objection for the above. In order to give a quietus to the long pending dispute among the brothers. In the light of the views



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expressed by the learned counsel on either side, we make it clear that the 1st respondent shall be entitle to use the private passage of the 2nd appellant only the extent indicated hereinabove.

(Dr.G.J.J.) & (M.S.K.J.)
11.11.2025

Index:yes/no
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To

1.The Sub-Asst. Registrar,
Original Side, High Court, Madras.



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