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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2025

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THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

A.No.697 of 2025

M/s.Bindu Appalam Depot and others

.. Applicants

VS

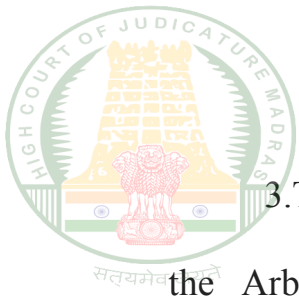
M/s.Emayam Industries P. Ltd.

.. Respondent

ORDER

This application has been filed under Section 27 of the Arbitration and Conciliation Act seeking seal of approval of this Court of the order passed by the Arbitral Tribunal, rendering assistance for the applicants to examine two witnesses, namely, Ms.S.Pavithra and Ms.V.Priya.

2.Under the order for which approval is sought for, the applicants had sought the assistance of the Arbitral Tribunal to examine the aforesaid witnesses. Under the order, the Arbitral Tribunal has allowed the request made by the applicants. The applicants seek seal of approval of this Court of the order passed by the Arbitral Tribunal under Section 27 of the Arbitration and Conciliation Act, 1996.



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3.The applicants are the respondents and the respondent is the claimant in the Arbitration. During the examination of witnesses, the applicants claim that there became a necessity for the applicants to make a request to the Arbitrator for examination of the aforesaid two witnesses, since the respondent/claimant has categorically denied that they had issued receipts, which have been signed by the aforesaid two witnesses, namely, Ms.S.Pavithra and Ms.V.Priya. According to the applicants, they have paid the entire dues of the respondent/claimant and the receipts were signed by Ms.S.Pavithra and Ms.V.Priya for the confirmation of the same. The Arbitrator has acceded to the request of the applicants for the examination of the aforesaid two witnesses through the Arbitrator's order dated 25.09.2024.

4.The respondent/claimant has filed a counter before this Court objecting to the approval being granted by this Court under Section 27 of the Arbitration and Conciliation Act, 1996 by raising the following objections:

a)No reasons whatsoever has been given by the Arbitrator for permitting the applicants to examine the two witnesses;

b)The witnesses cannot be summoned since they are no longer associated with the respondent/claimant;



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c) Ms. S. Pavithra, who was earlier working with the respondent/claimant, has subsequently resigned;

d) The witnesses, who have been examined in the arbitration by any of the parties need not know the contents of the contract.

5. Learned counsel for the applicants would reiterate that since there is no glaring error in the order passed by the Arbitrator, the question of interfering with the same by this Court under Section 27 of the Arbitration and Conciliation Act does not arise. He drew the attention of this Court to the order passed by the Arbitrator for which approval is sought for from this Court under Section 27 of the Arbitration and Conciliation Act.

6. On the other hand, the learned counsel for the respondent/claimant would reiterate the contents of the counter filed before this Court, which have been recorded in the earlier part of this order and would submit that this application is not maintainable. He would also rely upon the following authorities in support of his contentions in the counter filed before this Court:

a) **Chunni Lal v. Kishori Lal** reported in 1908 L.R. 36 I.A. 9 for the proposition that a litigant cannot cause his opponent to be summoned as a witness;



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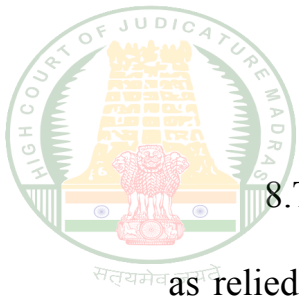
b) **Kaliaperumal v. Panakajavalli and others** reported in **MANU/TN/1249/1998** for the same proposition;

c) **Hindustan Petroleum Corporation Ltd. v. Ashok Kumar Garg** reported in **2006 SCC Online Delhi 1056** for the proposition that the Arbitral Tribunal should apply its mind to decide whether an application seeking for summoning witness is required or not;

d) **ONGC Ltd. v. Vijay Mahajan** reported in **2016 SCC Online Delhi 6371** for the proposition that a witness cannot be summoned to harass or embarrass the party, but can be examined only if it is essential;

e) **Steel Authority of India vs. Uniper Global Commodities** reported in **2023 SCC Online Delhi 7586** for the proposition that while accepting an application under Section 27 of the Arbitration and Conciliation Act, the Arbitral Tribunal will have to consider the significance of the evidence before accepting the request of the applicant for summoning the witness;

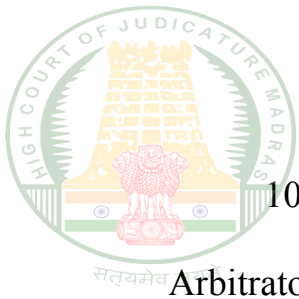
7. For the same proposition, the learned counsel for the respondent/claimant also relied upon an order passed by the Division Bench of this Court in A.No.4551 of 2023 in the case of **Vivek Automobiles v. Eicher Motor**, a decision rendered on 03.10.2024, followed by the decision rendered by the learned Single Judge of this Court dated 31.01.2025 in the same matter.



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8. The law is now well settled as held by the Division Bench of this Court, as relied upon by the learned counsel for the respondent/claimant in the case of Vivek Automobiles, referred to supra, that only when there is a glaring error in the order passed by the Arbitrator while permitting summoning of witnesses based on a request made by the applicants, this Court is having the power to interfere under Section 27 of the Arbitration and Conciliation Act, 1996. The said proposition is also accepted by the learned counsel for the respondent/claimant during the course of his submissions. He would submit that in the order of the Arbitral Tribunal for which approval is sought for from this Court under Section 27 of the Arbitration and Conciliation Act, 1996, no reasons whatsoever has been given by the Arbitrator for permitting summoning of two witnesses on a request made by the applicants.

9. This Court has perused and examined the order for which approval is sought for under Section 27 of the Arbitration and Conciliation Act, 1996. In the order of the Arbitrator dated 25.09.2024, the objection of the counsel for the respondent/claimant with regard to summoning of the two witnesses, has been recorded.



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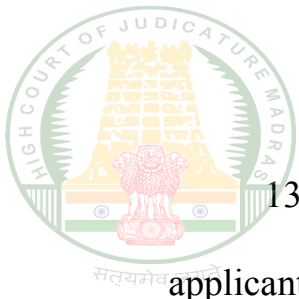
10. The first objection raised by the respondent/claimant before the Arbitrator is with regard to the alleged admission of the receipts, made by the respondent/claimant. With regard to the second objection, namely, that there is no such person named as Ms.V.Priya and the other witness for which an application has been filed before the Arbitrator to summon them as witnesses in the respondent's/claimant's organisation by raising the aforesaid objections, the respondent/claimant had requested the Arbitrator to reject the applicants' request for summoning the two witnesses. However, the Arbitrator has overruled the objections raised by the respondent/claimant by holding that the Arbitral Tribunal cannot stop a party from summoning a witness. According to the Arbitral Tribunal, the existence or non-existence of the witnesses can be established only by a party seeking to examine them in a manner known to them under law.

11. After giving the aforesaid reasons, the Arbitrator has acceded to the request of the applicants by allowing the applicants' application, who has sought permission of the Arbitral Tribunal to examine the two witnesses. The Arbitrator is the sole adjudicator of the dispute between the parties, based on the evidence available on record before him. He has come to the conclusion in the order that whether the witnesses sought to be examined by the applicants are in existence or not can be established only by the person, who wants to examine them in the manner known to them under law.



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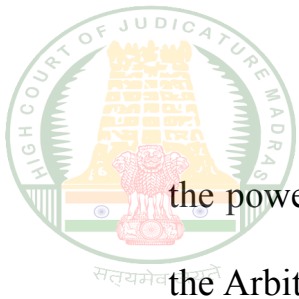
12.A categorical assertion has been made by the applicants before the Arbitrator as seen from the application seeking request to examine the two witnesses that those two witnesses were associated with the respondent/claimant when the transaction between the applicants and the respondent took place. Admittedly, as seen from the documents filed before this Court, one of the witnesses namely, Ms.S.Pavithra was under the employment of the respondent/claimant and she resigned subsequent to the passing of the order of the Arbitral Tribunal for which the seal of approval is sought for from this Court under Section 27 of the Arbitration and Conciliation Act, 1996. The resignation letter submitted by Ms.S.Pavithra along with the acceptance letter of the respondent/claimant has also been filed as a document before this Court. The same is also not disputed by the learned counsel for the respondent/claimant. The said fact is also not disputed by the learned counsel for the respondent/claimant during the course of his arguments. However, as seen from the order of the Arbitral Tribunal for which the seal of approval is sought for from this Court, the respondent/claimant seems to have taken a different stand stating that one of the witnesses Ms.V.Priya is not known to them and the other witness, namely, Ms.S.Pavithra is no way connected with the transaction. Unless and until both the witnesses are examined as witnesses in the arbitration, truth cannot be unearthed.



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13. A categorical assertion has also been made that to substantiate the applicants' case before the arbitration, it is required to examine the two witnesses as they have signed certain documents, which according to them, will prove that they are not liable for the claim amount made by the respondent/claimant before the arbitration. As observed earlier, the law is settled that unless and until there is a glaring error found in the order passed by the Arbitral Tribunal permitting examination of witnesses, the question of interference in an application filed under Section 27 of the Arbitration and Conciliation Act, 1996 by this Court does not arise.

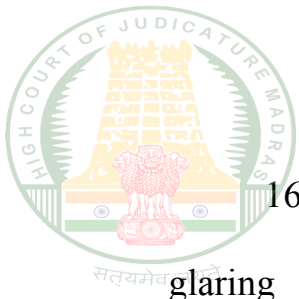
14. The case on hand is not a case, which calls for interference by this Court of the order dated 25.09.2024 passed by the Arbitral Tribunal. The decisions rendered by the learned counsel for the respondent/claimant have no bearing for the facts of the instant case. In the instant case, since the Arbitrator, who is the Master Adjudicator and who has to decide the dispute, on merits and in accordance with law, has come to the conclusion that the request of the applicants for summoning two witnesses has to be granted and has also given reasons though not detailed reasons, this Court cannot interfere with the view taken by the Arbitrator as the said view cannot be treated to be an impossible view and would amount to a glaring error. Only when there is a glaring error, this Court is having



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the power to interfere with the order of the Arbitral Tribunal under Section 27 of the Arbitration and Conciliation Act, 1996. The applicants are not summoning the opposite party in the instant case. They want to summon only the persons, who were earlier associated with the respondent/ claimant. The respondent/claimant has also admitted that both the witnesses are presently not associated with them as one of them has already resigned from the services of the respondent/claimant.

15. Even in the decision relied upon by the learned counsel for the respondent/claimant dated 31.01.2025 passed in A.No.4551 of 2023, the learned Single Judge of this Court has accepted that only in case of glaring error, the question of interference under Section 27 of the Arbitration and Conciliation Act, 1996 will arise, though in that case, the learned Single Judge had interfered with the order of the Arbitral Tribunal on account of the fact that the Arbitrator had committed a glaring error. Since the Distributor Agreement, which is the subject matter of the dispute, had clearly recorded the correspondence between the parties and no amount of oral evidence can be adduced contrary to the documentary evidence, only under those circumstances, the learned Single Judge had interfered with the order of the Arbitral Tribunal under Section 27 of the Arbitration and Conciliation Act, 1996.



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16.The case on hand is not one such case where this Court has noticed any glaring error in the order of the Arbitrator and therefore, the question of interference under Section 27 of the Arbitration and Conciliation Act, 1996 of the order passed by the Arbitral Tribunal does not arise.

17.For the foregoing reasons, this Court have to grant the seal of approval for the order passed by the Arbitral Tribunal dated 25.09.2024 under Section 27 of the Arbitration and Conciliation Act, 1996. Accordingly, this application is allowed as prayed for by directing issuance of summons to the witnesses namely, Ms.V.Priya and Ms.S.Pavithra, as ordered by the Sole Arbitrator, Justice B.Rajendran, Former Judge of this Court dated 25.09.2024 made in I.A. No.1 of 2024 in his arbitration proceeding in Arb.O.P. No.353 of 2023 and calling upon them to appear before the Arbitrator on 09.07.2025.

18.Any observation made by this Court in this order will not have any bearing in the final adjudication of the arbitration by the Sole Arbitrator. The contentions raised by the respondent/claimant before this Court can also be raised by the respondent/claimant under Section 34 of the Arbitration and Conciliation



Act, 1996 in case the respondent/claimant becomes unsuccessful in the arbitration.

No costs.

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ABDUL QUDDHOSE,J.

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