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Arb. O.P. (Com. Div.) No.440 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.440 of 2024
and
Appln. No.5419 of 2024

M/s. Vidarbha tractors ... Petitioner
vs.
1. M/s.Tractors and Farm Equipment Ltd.,
and another ... Respondents
For Petitioner : Mr.Naveen Sabari
for Mr.K. Prasanthan
For Respondents : Mr.Krishna Srinivasan,
Senior Counsel
for M/s.Ramasubramaniam
& Associates

This petition has been filed under Section 14 of the Arbitration and Conciliation Act, 1996 seeking for terminating the Mandate of the Arbitrator.

2. The petitioner has raised the following grounds for seeking termination of the Mandate of the Arbitrator:-



a) Exorbitant fees has been charged by the Arbitrator / 2nd

respondent, which is not in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

b) The petitioner has challenged the constitution of the Arbitral Tribunal since according to the petitioner, the Arbitrator / 2nd respondent has been appointed unilaterally by the 1st respondent.

c) The challenge made by the petitioner before the Arbitral Tribunal questioning the jurisdiction of the Arbitrator to decide the dispute on the ground that he has been appointed unilaterally by the 1st respondent has also been rejected, arbitrarily, by the Arbitrator.

d) During the arbitral proceedings, according to the petitioner, various incidents were noted by the petitioner, which raises serious doubts on the impartiality of the Arbitrator.

e) The petitioner never gave any waiver as required under Section 12(5) of the Arbitration and Conciliation Act, 1996 with regard to the arbitral proceedings conducted by the sole Arbitrator.

f) The Arbitrator, as per the VII Schedule also did not give his statutory disclosure.



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3. A counter has been filed by the 1st respondent denying the

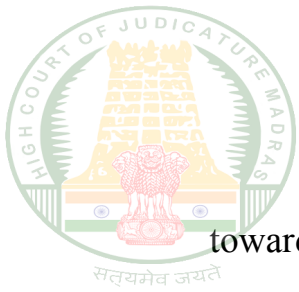
contentions of the petitioner. They contend as follows :-

a) The petitioner having participated in the arbitration and having filed the statement of defence and that too, at this belated stage, when the evidence is being recorded by the Arbitrator, the question of interference by this Court under Section 14 of the Arbitration and Conciliation Act does not arise.

b) The Arbitrator has not charged exorbitant fees as alleged by the petitioner.

c) In the Section 21 notice sent by the 1st respondent, the very same Arbitrator was nominated by the 1st respondent and in the reply sent by the petitioner to the same, the petitioner did not raise any objection and have stated “no comments”. Therefore, the question of entertaining this petition under Section 14 of the Arbitration and Conciliation Act, 1996, at this belated stage does not arise.

d) Earlier, the very same petitioner questioned the levy of fees of the Arbitrator in Arb. O.P. (Com. Div.) No.196 of 2024. This Court by its order, dated 05.06.2024, directed the petitioner to pay a sum of Rs.5,00,000/- towards the fees of the Arbitrator. The petitioner has also complied with the said directions and paid a sum of Rs.5,00,000/-



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towards the Arbitrator's fees. Accordingly, this Court vide Order, dated 12.06.2024 by consent of both the parties extended the Mandate of the Arbitrator to pronounce the Arbitral Award. Therefore, the question of entertaining this petition filed under Section 14 of the Arbitration and Conciliation Act does not arise.

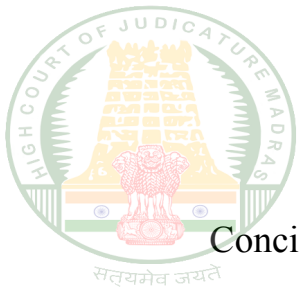
e) In the statement of defence, the petitioner has never contended that the Arbitrator was appointed by the respondent unilaterally and so, the mandate of the Arbitrator has to be terminated.

Discussion :

4. The following facts are undisputed :-

a) In the statement of defence filed by the petitioner before the Arbitrator in respect of the arbitral claim made by the 1st respondent, the petitioner has not questioned the unilateral appointment of the arbitrator by the 1st respondent.

b) In the reply to the Section 21 notice sent by the petitioner, the petitioner has only stated “no comments”. In the Section 21 notice sent by the 1st respondent, the very same Arbitrator was nominated by the 1st respondent, who is now conducting the arbitral proceedings. The challenge procedure provided under Section 13 of the Arbitration and

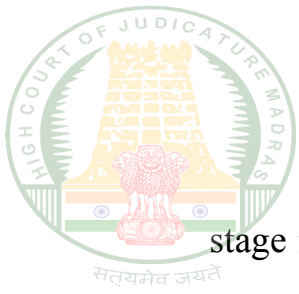


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Conciliation Act, 1996 makes it clear that if any party, who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the Arbitral Tribunal or after becoming aware of any circumstances referred to in sub-section(3) of section 12, send a written statement of the reasons for the challenge to the Arbitral Tribunal.

5. Admittedly in the case on hand, the challenge was made by the petitioner to the constitution of the Arbitral Tribunal only beyond the statutory time limit fixed under Section 13(2) of the Arbitration and Conciliation Act, 1996, referred to supra. The petitioner has also not produced any evidence to prove that they knew about the arbitrators impartiality much later. The Arbitrator has also dismissed the challenge made by the petitioner for his appointment as an Arbitrator. Thereafter the petitioner has also filed his statement of defence before the Arbitrator and has also not taken the plea of unilateral appointment of the Arbitrator.

6. The petitioner has raised bias against the Arbitrator. However, there is no evidence placed on record before this Court to prove bias against the Arbitrator. The arbitration is in the recording of evidence

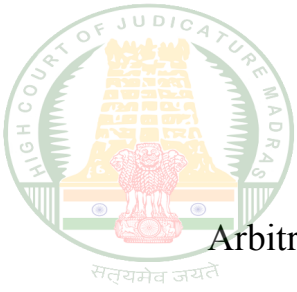


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stage i.e., Cross examination of the respondent's witness (CW1). In fact, the petitioner had earlier approached this Court by raising the very same ground that have been raised in this petition by filing Arb. O.P.(Com. Div.) No.196 of 2024. The said arbitration O.P. was disposed of by this Court on 12.06.2024, by directing the petitioner to pay a sum of Rs.5,00,000/- to the Arbitrator and this Court had also granted extension of the Mandate of the Arbitrator. The petitioner has also complied with the said directions, by paying a sum of Rs.5,00,000/- to the Arbitrator towards his fees. However, once again, the petitioner through this petition is seeking for termination of the Mandate of the Arbitrator raising the very same plea.

7. The learned counsel for the petitioner submits that since the Arbitrator has now become *de jure*, unable to perform his functions for the reasons stated in the affidavit filed in support of this petition, this Court is having the power to terminate the Mandate of the Arbitrator as per the provisions of Section 14 of the Arbitration and Conciliation Act, 1996. However, this Court is rejecting the said contention in view of the undisputed facts, which have been recorded in the earlier paragraphs of this order. There is no evidence whatsoever placed on record before this Court to prove that the Arbitrator has not adhered to the provisions of the



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Arbitration and Conciliation Act and he is impartial. There is also no

evidence to show that the Arbitrator has levied fees, exorbitantly.

Admittedly as on date, each of the parties have paid a sum of Rs.5,00,000/- totally amounting to Rs.10,00,000/-. As per the IV Schedule for the claim amount and the counter claim made by the respondent, the total Arbitrator's Fees payable is Rs.11.53 lakhs, which is also not disputed by the learned counsel for the petitioner. Since the Arbitrator has not charged beyond the Schedule IV of the Arbitration and Conciliation Act, 1996, the contention of the petitioner that he has charged exorbitant fees has to be rejected by this Court.

8. It is also noticed that in the first hearing of the arbitration held on 13.01.2023, Minutes has been recorded by the Arbitrator, wherein, he has declared that he has no interest either directly or indirectly, with either of the parties. Therefore, full disclosure has also been made by the Arbitrator in accordance with the statutory provisions as per the Arbitration and Conciliation Act, 1996. Therefore, the contention of the petitioner on that ground as well has to be rejected.

9. For the foregoing reasons, this Court does not find any merit in



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this petition. Accordingly, this petition is dismissed. However, it is left open for the petitioner to raise all grounds in case an Arbitral Award is passed against them under Section 34 of the Arbitration and Conciliation Act, 1996. No costs. Consequently, connected Appln. No.5419 of 2024 is closed.

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Index : Yes / No

Internet: Yes/No

Speaking Order/Non-Speaking Order

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ABDUL QUDDHOSE, J.

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