



Arb.Appeal.No.19 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :28.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Arb.Appeal.No.19 of 2024 and
C.M.P.No.29268 of 2024

N.Ramasamy
Proprietor, Sri Thenandal Films,
No.8, 80 Feet Road,
Devar Garden, Saligramam,
Chennai-600093

Also at N.Ramasamy
Proprietor, Sri Thenandal Films,
No.19, Saraswathi Street, Mahalingapuram,
Chennai-600034

... Appellant

Vs.

M/s.Marina Holdings
Rep. by its Partner, Mr.Rajkumar Sethupathy,
Level 7A, Capital Towers,
555 Anna Salai,
Teynampet, Chennai-18

... Respondent

PRAYER: Arbitration Appeal is filed under Section 37(2) of Arbitration and Conciliation Act, 1996 to set aside the order dated 09.12.2024 in IA No.6/2024 in Arb.OP No.1 of 2020 passed by the Sole Arbitrator.



Arb.Appeal.No.19 of 2024

WEB COPY

For Appellant : Mr.S. Karthikei Balan

For Respondent : Mr.K.Ravi
Senior Counsel
for M/s.Rugan and Arya

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order passed by the learned Arbitrator allowing the application filed by the respondent seeking recall of CW-1.

2. The respondent herein filed an arbitration claim petition seeking recovery of Rs.10,96,68,057/- based on the agreement between the parties marked as Exhibit C7 and C8. Admittedly, the pleadings were completed and the documents were also marked by the consent of the parties. It is seen from the impugned order that after completion of the pleadings and filing of the documents, the parties were directed to file affidavit of admission and denial. Subsequently, by proceedings dated 29.07.2024, the documents filed by the claimant as well as the respondent were marked. Thereafter, the present application has been filed seeking recall of CW-1 on the ground that proof affidavit filed by CW-1 is already on record.



Arb.Appeal.No.19 of 2024

WEB COPY

3. The learned Arbitrator allowed the application on the ground that the application filed under Order XVIII Rule 17 of CPC for recalling the witness will not cause any prejudice to the appellant herein. Aggrieved by the said order, the appellant has come before this court.

4. Section 37 (2) of the Arbitration and Conciliation Act, 1996 reads as follows:-

37. Appealable orders. –

(2) Appeal shall also lie to a court from an order of the arbitral tribunal

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

5. Section 16 and 17 of Arbitration and Conciliation Act, 1996 reads as follows:-

16. Competence of arbitral tribunal to rule on its jurisdiction.



Arb.Appeal.No.19 of 2024

WEB COPY

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, -

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.



Arb.Appeal.No.19 of 2024

WEB COPY

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or subsection (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. Interim measures ordered by arbitral tribunal.

(1) A party may, during the arbitral proceedings, apply to the arbitral tribunal—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following



Arb.Appeal.No.19 of 2024

WEB COPY

matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure



Arb.Appeal.No.19 of 2024

WEB COPY

of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court”.

6. The combined reading of Section 37(2) and Section 17 of Arbitration and Conciliation Act, 1996 would indicate that only in cases where the petition for interim measure as mentioned in Section 17 of Arbitration Act are disposed of, the appeal will lie under Section 37(2) of the said Act. The petition filed by the respondent seeking recall of CW-1 witness cannot be treated as application for interim measure within the meaning of Section 17 of Arbitration Act.



Arb.Appeal.No.19 of 2024

WEB COPY

Therefore, the appeal filed by the appellant is not maintainable. Hence, the civil miscellaneous appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

28.03.2025

Index: Yes/No
Internet: Yes/No
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To

1. The learned Arbitrator, Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



Arb.Appeal.No.19 of 2024

S.SOUNTHAR, J.

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Arb.Appeal.No.19 of 2024 and
C.M.P.No.29268 of 2024

28.03.2025