



Arb. Appeal(MD)No.41 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Arb. Appeal(MD)No.41 of 2025

M/s.Saravana Selvarathnam
Retail Pvt. Ltd.,
Rep. by its Managing Director,
No.199, Oppanakara Street,
Town Hall,
Coimbatore-641 001.

... Appellant / Petitioner

Vs.

1.M/s. Inway Infotek,
Rep. by its partner
Mr.Vijay Vicraman,
No.2/17Q, Irugur Road,
Chinniyampalayam,
Coimbatore-641 062.

2.The Registrar,
Chamber Arbitration Tribunal (ChaAT),
No.17B, Kamarajar Salai,
Madurai-625 009.

... Respondents / Respondents

PRAYER: Arbitration Appeal filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996, to call for the records pertaining to Ar.O.P.No.108 of 2021 on the file of the Principal District Court, Madurai, and set aside the portion of fair and executable order dated 26.11.2024 which remands back the matter for fresh disposal to the 2nd respondent.



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For Appellant : Mr.G.Karthikeyan,
Senior counsel
Mr.P.Subbiah

For R-1 & R-2 : No appearance

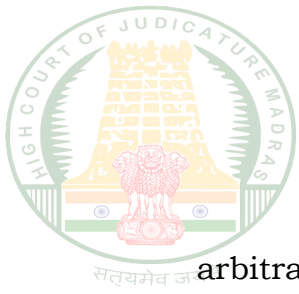
JUDGMENT

This Arbitration Appeal arises as against the order passed by the learned Principal District Judge, Madurai, in Arbitration O.P.No.108 of 2021 dated 26.11.2024.

2. Despite the names of the respondents been printed after due service of notice, none appeared on behalf of the respondents.

3. For the sake of convenience, the parties herein are referred to as per their ranking before the Chamber Arbitration Tribunal (ChaAT) at Madurai.

4. The claimant, one M/s.Inway Infotech, Coimbatore, raised a commercial dispute in Case No. CAT. 004 of 2019 before the Chamber Arbitration Tribunal (ChaAT) Madurai, as against the respondent M/s. Saravana Selva Rathnam Retail Private Limited, Coimbatore. The said



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arbitral proceeding arose under the Chamber Arbitration Tribunal Rules, 2007, initiated by the claimant M/s. Inway Infotech, Coimbatore, by giving notice of request for arbitration dated 24.07.2019, which was received by the ChaAT on 18.08.2019, for recovery of an amount of Rs. 2,82,776/- from the respondent towards the supply of goods in 5 invoice numbers bearing Nos. D0122, D0123, D0129, D0195, and D0197.

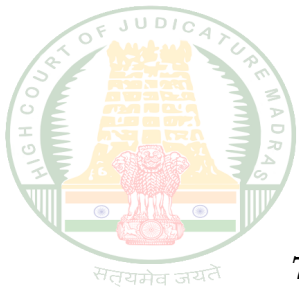
5. According to the claimant, even after repeated follow up calls and letters to pay the amount, there was no response from the respondent, as a result of which, the claimant had moved ChaAT with the request of arbitration for recovery of the said amount along with interest and legal charges. The said request was registered by ChaAT, Madurai, and the sole arbitrator, Thiru. S.Rathinavelu, was appointed in this regard to adjudicate and decide the dispute between the parties. Three issues were considered by ChaAT and it was concluded that the claimant is entitled to receive from the respondent an amount of Rs. 2,82,776/- with interest at a rate of 12% from the date of claim, that is, 24.07.2019, till the date of realization, along with the cost of arbitration proceedings which was worked out to Rs.22,397/-. Challenging the same, the respondent preferred the arbitration petition in Arb.O.P.No. 108 of 2021 before the learned District Judges Court at Madurai, and



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the learned District Judge, by an order dated 26.11.2024, allowed the same and remanded the case back to the Arbitration Tribunal, ChaAT for fresh enquiry, with the direction to give sufficient opportunities to the parties. Challenging the same, this Arbitration Appeal in Arb.Appel(MD)No.41 of 2025 is filed.

6. The learned senior counsel, Mr. Karthikeyan appearing for the appellant submitted that, when the claimants raised the dispute before the ChaAT, the appellant herein duly filed a preliminary objection questioning the maintainability of the said dispute before ChaAT. However, the same was dismissed in *limine*. After the dismissal of the preliminary objection on 14.12.2019, the appellant herein did not participate in the arbitration proceedings. Despite their absence, the sole arbitrator proceeded to deal with the matter and pass the final order on 20.07.2020 holding that the claimant/respondent herein is entitled to receive an amount of Rs.2,82,766/-, with interest and cost of arbitration. However, in the appeal, the learned Principal District Judge without going into the question of maintainability had proceeded to allow the appeal and remanded back the same before the same sole arbitrator for fresh enquiry.



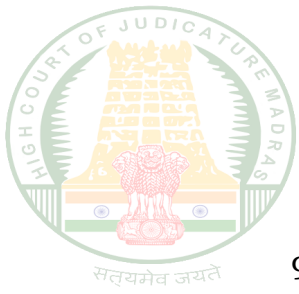
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7. The learned Principal District Judge, recording the arguments of counsel for the appellant herein that, though in the terms and conditions were noted in the invoice bill, there was no arbitration clause between the appellant and the respondent at the time of placing the purchase order. From the careful perusal of the impugned order, it could be understood that the learned District Judge had proceeded on the premise that, despite the presence of arbitration clause in the invoice without objecting to the same, the parties have agreed upon with each other to take forward the business between themselves. Hence, the same would amount to have agreed the terms and conditions impliedly as enumerated in Section 7(2) of the Arbitration and Conciliation Act, 1996.

8. The learned senior counsel pointed out that, there cannot be an arbitration agreement on implication. The question of an implied arbitration agreement will not arise and hence the District Judge ought to have dealt with the preliminary objection raised by the appellant herein as to the maintainability of the arbitration itself. Section 7(2) of the Arbitration and Conciliation Act, 1996, reads as follows:

“An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.”



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9. The extracted Section 7(2) of the Arbitration and Conciliation Act, 1996, would make it clear that the said provision is not with respect to implied agreements, but it precisely states that an arbitration agreement has to be in the form of an arbitration clause in a contract or in the form of a separate agreement. As far as the case in hand is concerned, two documents were involved in the business between the appellant and the respondent, five invoices D0122, D0123, D0129, D0195, and D0197 and four purchase orders for the entire business to the tune of Rs.2,82,766/-. Obviously there is an arbitration clause in the tax invoice.

10. The tax invoice, dated 22.09.2008, for invoice number D0123 and D0129, in its terms and conditions has a clause that any and all controversy in connection with or in relation to the sale bill shall be referred and resolved through the arbitration by the arbitrators nominated by ChaAT, Coimbatore, and ChaAT Rules, 2007, shall prevail. Both the parties agreed that the award rendered by ChaAT shall be binding on them and the language shall be Tamil and the venue shall be Madurai.

11. As far as tax invoices dated 22.09.2018, bearing Nos.D0122, D0195 and D0197, the terms and conditions makes it clear that the



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language shall be Tamil and the venue shall be Coimbatore. As far as the purchase orders are concerned, the same is issued by the appellant herein on 29.09.2008, which do not have any arbitration clause. It is pertinent to mention here that the appellant herein is not signatory to the tax invoices wherein the arbitration clause is incorporated. Hence, it is needless to state that there is no acceptance on the part of the appellant with respect to the terms and conditions of arbitration mentioned in the tax invoices.

12. That apart, there is a discrepancy as to the venue for raising the arbitration where two of the invoices mentioned that the venue would be Madurai and the other three would mention that the venue would be Coimbatore. However, a careful perusal of the arbitration claim petition raised by the respondent herein, the same is in English contrary to their own terms and conditions which had mandated that the claim petition should be in Tamil.

13. This Court has dealt with a similar matter in **Original Petition No.823 of 2014, dated 12.08.2015¹**, and the relevant portion of the same is extracted as follows:

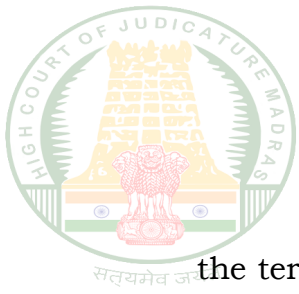
¹ 2016 AIR (Madras) 19



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“17. In the sequence of documents issued, it is the respondent who first issued the purchase order. This does not contain an Arbitration Clause. The document of delivery of goods also does not contain an arbitration clause. It is stated to be signed by the 'gate keeper' of the respondent. It is only the invoice issued to the petitioner which contains the arbitration clause and it is stated to have been simultaneously issued in view of the factum of the same being interlinked to the goods received. This document neither contains the declaration in the prescribed form duly signed at the back nor is there any other endorsement so as to consider it as an acceptance on the part of the respondent. There is in fact thus no agreement whatsoever inter se the parties on the issue of the mode of resolution of the dispute through arbitration and there cannot be an arbitration clause by implication in any other document. In fact, the very fact that the respondent has not signed this document would show the unwillingness of the respondent to accept the arbitration as a mode of resolution of dispute, to which the petitioner had never protested.”

14. Fully fortified by the aforesaid judgment, I have no hesitation to hold that there cannot be an arbitration clause by implication as held by the learned District Judge in the absence of an explicit arbitration agreement between the parties concerned. That apart, the arbitration clause which has been relied upon by the claimants, that is, the respondent herein for raising the arbitration disputes on the basis of



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the terms and conditions in the invoice to which the appellant herein is not signatory will not bind the appellant herein.

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15. Accordingly, the Arbitration Appeal is allowed and the order of the learned District Judge is set aside. No costs.

08.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To
The Principal District Court,
Madurai.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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