

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 14.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.221 of 2021

1. M/s.Focus Imaging and Research Centre Private Limited,
Represented by its Managing Director Dr.Prashant Sarin
H-10, Green Park Extension, New Delhi – 110 016.
2. Dr.Prashant Sarin
S/o.Late Mr.R.P.Sarin,
H-10, Green Park Extension, New Delhi – 110 016.
3. Mr.Vinod Kumar, Sharma,
S/o.Late Mr.M.L.Sharma,
B-184, 1st Floor, NirmanVihar, New Delhi – 110 092. . . . Petitioners

Versus

M/s.Kotak Mahindra Bank Ltd.,
5th Floor, Samson Towers,
402 L, Pantheon Road, Egmore, Chennai – 600 008. . . . Respondent

PRAYER : Petition filed under Section 34 [2] of Arbitration and Conciliation Act, 1996 to set aside the impugned Arbitral Award dated 03.01.2020 passed by the sole arbitrator, herein in the Arbitration Case No.KBBDM 13/2019.

For petitioners : Mr.K.R.Arun Shabari

For respondent : Mr.M.Arunachalam.

ORDER

This petition has been filed to set aside the award passed by the sole arbitrator dated 03.01.2020.

2. The award was mainly challenged on the following grounds :

i] Notice of invocation has not sent to the petitioner besides proceedings of the arbitrator has not been served on the petitioner.

ii] The arbitrator was appointed by the respondent unilaterally, which violate the law of the land.

iii] The arbitrator appointed has prior relationship with the respondent and appeared for the respondent in many other matters.

3. Heard Mr.Arun Sabarai, learned counsel appearing for the petitioners and Mr.Arunachalam, learned counsel appearing for the respondent.

4. The main ground of challenge is non service of notice. This Court called for the records from the arbitral tribunal. A perusal of the original file produced by the arbitration reveals that the contention of non service of notice cannot be countenanced. Infact, acknowledgment is available on record and the notice has been served on the petitioner. Therefore, the contention of non service of notice and no opportunity has been given has no legs to stand.

5. With regard to the second aspect, unilateral appointment of the arbitrator, it is not disputed by both sides that the arbitrator has been appointed unilaterally, which is in fact, contrary to the stipulated parameters. When the very appointment is against the law of land, the award is certainly vitiated on the ground of fundamental policy of India.

6. As far as the ground that the arbitrator has not disclosed the previous

appointment as an arbitrator in the matters relating to the respondent, though the disclosure statement has been filed by the arbitrator, the same indicate that he has 13 on going arbitration matters and he never disclosed anything about respondent financial institution. Whereas, in column No.5 it has been mentioned that there is no personal interest in the matter.

7. It is to be noted that when a person is appointed as an arbitrator in any matter, he shall disclose in writing the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter dispute, whether financial or business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality in arbitration. Whereas, the disclosure made by the arbitrator do not indicate that he has already been appointed as arbitrator in a dispute raised by the first respondent. When records placed before this Court reveals that he has been appointed as an arbitrator in many cases on behalf of the respondent, non disclosure about his relationship with the respondent, independence and impartiality cannot be expected from the person who is already having relationship with the company. In such view of the matter, the award passed by the arbitrator

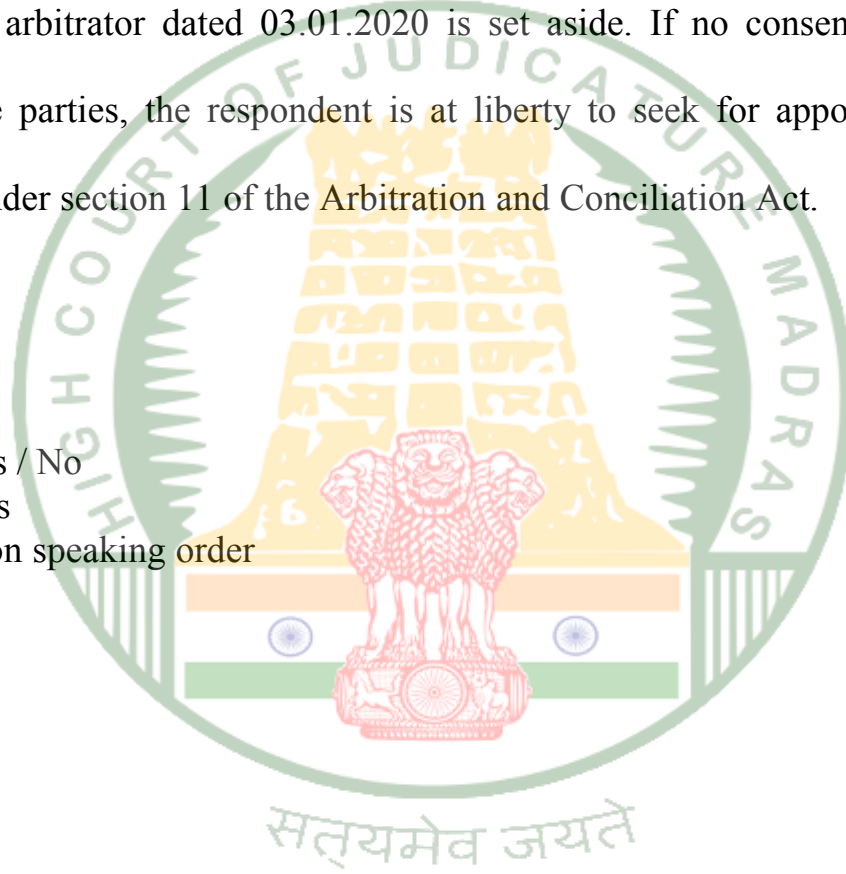
certainly violates the provisions of the Arbitration and Conciliation Act and the award cannot be sustained in the eye of law.

7. Accordingly, this Original Petition is allowed and the award passed by the learned arbitrator dated 03.01.2020 is set aside. If no consensus is arrived between the parties, the respondent is at liberty to seek for appointment of an arbitrator under section 11 of the Arbitration and Conciliation Act.

14.07.2021

Index : Yes / No
Internet: Yes
Speaking/non speaking order

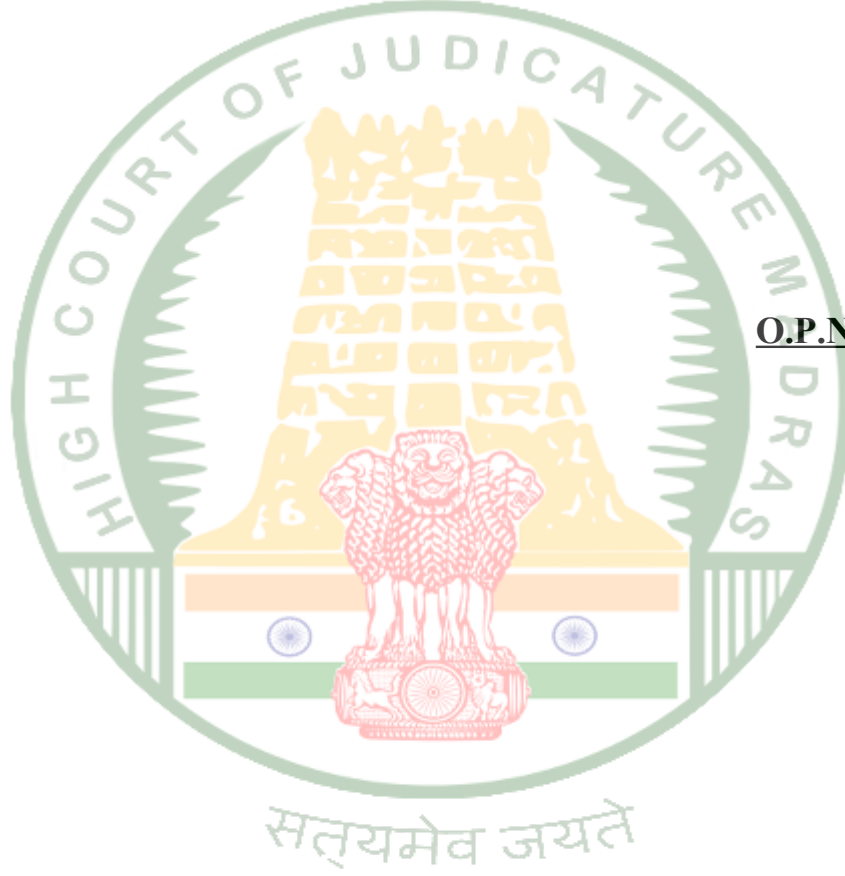
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O.P.No.221 of 2021

N. SATHISH KUMAR, J.
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O.P.No.221 of 2021

14.07.2021

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