IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 24-06-2026**

**Pronounced on : 16.07.2026**

CORAM

**THE HON'BLE MR JUSTICE P. VELMURUGAN**

**AND**

**THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI**

**OSA No. 87 of 2019**
**AND**
**CMP NO. 8575 OF 2019**

Mrs. B. Anubhama
No.292/a, Arcot Road, Kodambakkam,
Chennai. 600 024

..Appellant

Vs

1.S. Baskaran
Flat No.F1, A Block,
Indira Grandeur Apartment,
EB Office Road, Mugappair East,
Chennai 600 037

2.M.V. Salai Abaranam
D 139, Parameswari Vihar,
No.28, Arcot Road,
Chennai 600 093

R. Kalanjiam (deceased)

3.K. Venkatraman
No.3, Sanjay Gandhi Nagar
Virugambakkam
Chennai 600 092

4.Justice Thiru. A. Raman
NCB 7A PFK Raja Salai,
R.A. Puram, Chennai 600 028

..Respondents

**PRAYER:** Original Side Appeal filed under Order XXXVI Rule 9 of O.S. Rules and Clause 15 of Letters Patent praying to set aside Judgment and Decree dated 09.11.2017 passed in OP No.19 of 2015.

| | |
|---|---|
| For Appellant: | Mr.S.R. Rajagopal, Senior Advocate for Mrs. R.Balambigai Gowri |
| For Respondent(s): | Mrs. Chitra Sampath, Senior Advocate for Mr. V.R.Anna Gandhi For R2 |

**Judgment**

**(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)**

This appeal is filed praying to set aside the order dated 09.11.2017 passed in OP No.19 of 2015.

2. For the sake of convenience the parties are referred to as per their ranking in the Tribunal.

3. Facts leading to invoke arbitral proceedings are as follows:

3.1. The claimant, namely, M.V, Salai Abarama, is in Real Estate Business and offers his services on service charge basis by identifying prospective buyers for any offer of sale of land by any third party. The 1st respondent in the Arbitral proceeding and appellant herein, namely,Mrs.S.Anubama is doing Real Estate business under the name and style M/s. Sameera Associates. The 2nd respondent, namely, Mr.S.Baskaran is the husband and Power Agent of the 1st respondent. The 1st respondent is engaged in purchasing and organising purchase of pieces of land from various third parties, consolidate the same, prepare layout and offer it for sale to prospective buyers through her Power of Attorney. The 2nd respondent for and on behalf of the 1st respondent approached the claimant and respondents 3 and 4, namely, R. Kalanjiam and K. Venkatraman to fix and nominate buyer in 1170 acres in villages such as Thirumangalam, Vasanapattur, Thirupandiyur, Mampakkam, Kaliyamanikkam and other villages in Sripeumbudur Taluk. Respondents 1 and 2 promised to pay service charge of Rs.1,500/- per cent jointly to the claimant and respondents 3 and 4, which was to be shared by them in equal share. The service charges had to be paid at the time of registration of every sale deed. A Memo of understanding was entered into on 19.05.2006 incorporating the clauses relating to offer of payment of service charges and the same was accepted and signed by the parties. The Memo of Understanding also provides for Arbitration to resolve disputes arising between the parties.

3.2. M/s. ETA Star Properties Developers purchased through respondents 1 and 2, 500 acres in the above villages identified by the claimant. Hence, the respondents 1 and 2 are liable to pay Rs.7,50,00,000/- jointly to the claimant and the respondents 3 and 4, out of which the claimant is legally entitled to a sum of Rs.2,50,00,000/- towards his share. The respondents 1 and 2 have paid only Rs.27,00,000/- to the claimant leaving a balance of Rs.2,23,00,000/-. Hence, the claimant filed a Claim before the Arbitral Tribunal claiming that he is entitled to interest at the rate of 24% till the date of Claim Petition in a sue of Rs,1,60,56,000/- and future interest and costs.

3.3. The respondents were served with notice. Respondents 1 and 2 represented by counsel and though took several adjournments for filing their counter, remained absent. Respondents 3 and 4 also remained absent.

3.4. The learned Arbitrator, having found that the respondents did not evince any interest to appear, passed the Award with the available material in favour of the claimant by directing the respondents 1 and 2 to pay a sum of Rs.2,57,92,000/- with interest at the rate of 12% from 02.12.2010 till the date of realisation within a period of six months from the date of Award and further directed the respondents 1 and 2 pay a sum of Rs.6,04,000/- to the claimant towards cost of the claim.

3.5. Aggrieved over the same, petitions were filed by the respondents 1 and 2 under Section 34 of the Arbitration and Conciliation Act, 1996 (in short A&C Act, 1996) in O.P. Nos.19 and 18 of 2015 respectively. The learned Single judge while allowing the Petition in O.P. No.18 of 2015 filed by the 2nd respondent (Power Agent of the 1st respondent) on the ground that for any action or inaction relatable to the Principal, the agent cannot be made liable, dismissed O.P. No.19 of 2015.

4. Aggrieved over the same, the 1st respondent has filed the present appeal.

5. The present appeal challenges the order dismissing the petition filed by the appellant under Section 34 of the A&C Act, 1996, in O.P. No.19 of 2015. By the same impugned order, the petition filed by the 2nd respondent, in O.P. No.18 of 2015 was allowed, and the *ex parte* award was modified thereby exonerating the 2nd respondent from liability, holding that he acted merely as an agent of the principal and that fastening liability upon him was contrary to Section 230 of the Contract Act, 1872.

5.1. The learned Single Judge while affirming adverse inference drawn by the Arbitral Tribunal on account of the appellants' continued absence during the Arbitral Proceedings, nevertheless directed that the issue of discharge of liability be determined by the Executing Court.

5.2. Mr.S.R.Rjagopal, learned Senior Advocate appearing for the appellant would submit that, the award was liable to be interfered under Section 34(2)(a)(iii) on the ground of insufficiency of hearing proceedings to the appellant herein. That the Arbitral Award was violative of the decision of the Hon'ble Division Bench in the case of ***Saraswathi Chemicals vs. Balmer Lawrie & Company Limited*** reported in ***2011 (3) CTC 9,*** which follows the decision of Hon'ble Supreme Court in ***Sohan Lal Gupta (dead) through Lrs vs. Asha Devi Gupta*** reported in ***(2003) 7 SCC 492.***

5.3. It is further contended that, the learned Single Judge while exercising jurisdiction under Section 34, did not possess the power to modify the Arbitral Award dated 07.07.2014. The petition under Section 34, having been filed in November 2014 and adjudicated on 09.11.2017 was governed by the law as it stood on that date, under which the Courts exercising jurisdiction under Section 34 did not have the authority / power to modify an Arbitral Award, but were confined only to setting it aside on the limited grounds prescribed therein. In this regard, the decision in ***Mcdermott International Inc. v. Burn Standard***

***Co. Ltd., & Ors.,*** reported in ***(2006) 11 SCC 181*** and ***Project Director, National Highways No.45E and 220 National Highways Authority of India vs. M. Hakeem & Another*** reported in ***(2021) 2 SCC 1*** were relied upon. He would further submit that, the Hon'ble Supreme Court in ***Gayathri Balasamy vs. I.S.G. Novasoft Technoloties Ltd.,*** reported in ***(2025) 7 SCC 1,*** by judgment dated 30.04.2025 clarified that Courts exercising jurisdiction under Section 34 possesses a limited, restricted and implied power to modify, sever, or partially set aside the Arbitral Award. Prior to the said authoritative pronouncement, the settled legal position was that Courts under Section 34 lacked the power to modify or partially set aside an Award. In the present case, however, the learned Single Judge while allowing O.P.No.18 of 2015 filed by Mr.S.Baskaran, arrayed as the 1st respondent herein, proceeded to modify the Arbitral Award to the extent of exonerating him from liability, not withstanding the legal position prevailing at that time.

5.4. It is further contended that, the learned Single Judge erred in not appreciating that the Award was in conflict with Public policy for the reason that the 2nd respondent herein, M.C. Salai Abraman had entered into MOU with appellant on 19.05.2006 in furtherance of which, consideration of Rs.1,500/- per cent was payable at the time of registration of every sale deed. That the payments in discharge were made, acknowledged by his other partners. Ostensibly a dispute between partnership has resulted in the claim being preferred.

5.5. When Clause 4 of the MOU, Ex.C1 reads thus:

"*Whereas the party of the first part has agreed in consideration of the services rendered by party of the second part to pay an agreed service charges to party of the second part on the following terms"*, whether an award by the learned Arbitrator, misinterpreting the clause, awarding amount to the claimant holding the same to be his share was the possible view based on reasonable construction of terms and one not falling within the contravention of fundamental policy of India warranting the Award to be set aside.

5.6. He further contended that, the ground of patent illegality, having been specifically raised in the petition filed under Section 34 of the A&C Act, 1996, was not duly considered by the learned Judge in the impugned order. On the contrary, the learned Single Judge, in the impugned order has observed as follows:

> "*on the other contention regarding the discharge, considering the scope of Section 34 of the Arbitration and Conciliation Act, 1996, this Court cannot go into the same, as the role to be played by this Court is circumscribed by Section 34. Therefore, when the statute places a fetter on the power to be exercised, this Court cannot act contrary to the same. The Award merely statesabout the liability, if*

*it is one of discharge, it is for the petitioner to substantiate it before the Execution Court."*

*Such an* approach, whereby a material ground of challenge is declined to be adjudicated and instead relegated to stage of execution, vitiates the impugned order. Hence, it is submitted that, failure to consider the plea of patent illegality, going to the root of the award, renders the award liable to be set aside, an issue squarely arising for consideration in the present appeal. Further, the learned Single Judge erred in drawing adverse inference based on the continued absence of the parties before the Arbitral Tribunal.

5.7. He further submitted that, it is well settled law that Arbitrators must follow a fair and evidence based procedure even in a *ex parte* proceeding. Non appearance or absence of a party in Arbitral proceedings cannot form the basis for drawing adverse inferences on the merits of the case in the absence of any evidence supporting the same. Section 25 (C) of the 1996 Act, states that, in the event a party fails to appear at an oral hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the Arbitral Award on the basis of evidence before it. However, an Arbitral Award based on no evidence, would be perverse and thus, patently illegal under Section 34(2-A) of 1996 Act. In the present case, the learned Arbitrator without satisfying on evidence, the proof of facilitation services rendered by the 2$^{nd}$

respondent herein or on payment of consideration to the other partners imposed liability on the appellant. To support his contentions, he has relied on the following judgments:

***1. Delta Distilleries Limited vs. United Spirits Limited and Another reported in (2014) 1 SCC 113.***

***2. Juggilal Kamlapat vs. General Fibre Dealers Limited reported in 1954 SCC OnLine Cal 53.***

***3. Associates Builders vs. Delhi Development Authority reported in (2015) 3 SCC 49***

5.8. Therefore, the award passed by the learned Arbitrator on 07.07.2014 directing the appellant to pay the claim, *inter alia* is liable to be set aside as the amount has already been paid and there is no due on the part of the appellant. As such, the award is in contravention of public policy and hence, the impugned order dated 09.11.2017 dismissing the Original Petition in O.P. 19/2018 is liable to be set aside and the matter may be remanded for fresh consideration by the Arbitrator.

6. On the other hand, Mrs. Chitra Sampath, learned Senior Advocate appearing for the second respondent would submit that, the Arbitrator has made a reasoned award dated 07.07.2014 holding that the claimant is entitled to a

sum of Rs.2,57,92,000/- with interest at the rate of 12% from 02.12.2010 till the date of realisation and the amount shall be paid within 6 months from the date of award and directed the appellant and 2nd respondent therein to pay a sum of Rs.6,04,000/- to the claimant towards cost of this claim. Further, it is submitted that under Section 37 of the Act, 1996, the power to remand is only in exceptional cases and not as matter of routine. If the Courts dealing with appeals under Section 37 of the A&C Act, 1996, starts routinely passing the orders of remand, the Arbitral procedure will cease to be efficient and it will cease to be cost effective. Such orders will delay the conclusion of the proceedings, thereby defeating the very object of the Arbitration Act. In the facts of the present case, the remand was completely unwarranted. To support her contentions, she has relied upon the following judgments:

***1. J.C. Budhraja vs. Chairman, Orissa Mining Corporation Ltd., and another reported in (2008) 2 SCC 444***

***2. Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani reported in (2024) 7 SCC 218***

7. Heard on both sides. Records perused.

8. The appeal is directed against the order of the learned Single Judge dismissing the petition filed under Section34 of the A&C Act, 1996, whereby the Arbitral Award dated 07.07.2014 was upheld with modifications.

9. Before the learned Single Judge, the appellant herein assailed the Award principally on the ground that, the Arbitral proceedings were conducted in violation of the principles of natural justice, that the learned Arbitrator proceeded *ex parte* after issuing only a single notice , thereby the appellant was deprived of his opportunity to plead and submit documentary evidence regarding discharge of the claim amount to the other partners, which was also acknowledged by them. It is further contended by the learned counsel for the appellant that the learned Single Judge failed to exercise the jurisdiction vested on him under Section 34 of the A&C Act, 1996 and erroneously held that the question of discharge could be agitated before the Executing Court, which is contrary to the fundamental policy of Indian Law. It is the further contention on the side of the appellant that the learned Single Judge, by the impugned order, modified the Arbitral Award dated 07.07.2014 to the extent of exonerating one Mr. Baskaran, who was arrayed as the first respondent in O.P.No.19 of 2015 and as the petitioner in O.P. No.18/2015, from any liability under the Award, holding that he acted merely as an agent of the principal and that fastening liability upon him was contrary to Section 230 of the Contract Act, 1872, which is patently illegal warranting interference of this Court.

10. Now, it has to be firstly seen whether the award was liable to be interfered under Section 34(2)(a)(iii) in the petition filed under Section 34 of the A&C Act, 1996, on the ground of insufficiency of hearing proceedings to the appellant herein. The term 'reasonable opportunity' would mean that the party must be given opportunity to explain his arguments and adduce evidence. In this regard, the Hon'ble Supreme in the case of ***Saraswathi Chemicals vs. Balmer Lawrie & Company Limited*** (cited supra) has held as follows:

> ***"19.** Observing that the procedural rule applicable to Arbitration proceedings is more tolerant than the rule followed in Court of law, in **Juggilal Kamlapat v. General Fibre Dealers Limited, AIR 1955 Cal. 354** the Calcutta High Court summarised the principles which govern the matter as follows:*
>
> > *"If a party to an Arbitration Agreement fails to appear at one of the sittings, the arbitrator cannot or, at least, ought not to, proceed ex parte against him at that sitting. Where the non-appearance was accidental or casual, the Arbitrator ought ordinarily to proceed in the ordinary way, fixing another date of hearing and awaiting the future behaviour of the defaulting party.*

*If, on the other hand, it appears that the defaulting party had absented himself with a view to preventing justice or defeating the object of the reference, the Arbitrator should issue a notice that he intends at specified time and place to proceed with the reference and that if the party concerned does not attend, he will proceed in his absence. But, if after making such a peremptory appointment and issuing such a notice, the Arbitrator does not in fact proceed ex parte on the day fixed, but fixes another subsequent date, he cannot proceed ex parte on such subsequent date, unless he issues a similar notice in respect of that date as well.*

*If he issues a similar notice and the party concerned does not appear, an award made ex parte, will be in order. But if he does not issue such a notice on the second occasion, but nevertheless proceeds ex parte, the award will be liable to be set aside in spite of a notice of a peremptory hearing having been given in respect of the earlier date, subject, however, to the condition that prejudice was caused to the party against whom the ex parte order was made. But this duty to give notice of an intention to proceed ex parte is not an absolute duty.*

> *If it appears from the circumstances of the case that a particular party is determined not to appear before the Arbitrators in any event, as when he has openly repudiated either the reference itself or the particular Arbitrators and has show no desire to recant, the Arbitrators are not required to issue a notice of an intention to proceed ex parte against such a recusant person and may proceed ex parte and make a valid award without issuing a notice. The better course, however even in such a case is to issue a notice and give the party concerned a chance to change his mind."*

10.1. The learned counsel for the appellant drew our attention to the minutes of meeting maintained in the Arbitration proceedings and submitted that on 19.12.2011 the learned Arbitrator recorded the presence of counsel for the appellant / 1st respondent and on the next hearing, i.e., on 18.01.2012, the learned Arbitrator proceeded to record that the respondents are set *ex parte.* Hence, the learned counsel for the appellant would submit that the learned Arbitrator ought to have provided reasonable time for the appellant to putforth her arguments and evidence. The records disclose that only one notice was issued by the learned Arbitrator to the appellant. On her non appearance, she was set *ex parte* and the Award came to be passed. There is nothing on record to indicate that the learned Arbitrator satisfied himself that the appellant had been afforded a fair and effective opportunity to present her case before depriving her such valuable right. The Hon'ble Supreme Court in ***Sohan Lal Gupta (dead) through Lrs. and others vs. Asha Devi Gupta (SMT) and others*** (cited supra) has held that, for constituting a reasonable opportunity ,the following conditions are required to be observed.

*1. Each party must have notice that the hearing is to take place.*

*2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.*

*3. Each party must have the opportunity to be present throughout the hearing.*

*4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.*

*5. Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.*

*6. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument.*

Further Section 18 of the A&C Act, mandates equal treatment of parties and requires each party to be given a full and fair opportunity to present their case. Section 24 of the A&C Act, 1996, also contemplates a meaningful opportunity of hearing. An Arbitral Award rendered in breach of these statutory safeguard is liable to set aside under Section 34(2)(a)(iii) of the A&C Act, 1996. The Hon'ble Supreme Court has consistently held that adherence to the principles of natural justice is the foundation of every arbitral proceedings and that denial of a reasonable opportunity vitiates the award. The appellant had also raised a specific defence that payments had already been made to other partners of the agreement. Such a plea goes to the root of the claim and renders the Award vulnerable under Section 34 of the A&C Act, 1996. The learned Single Judge, in the proceedings under Section 34 of the A&C Act, 1996, instead of examining these jurisdictional errors, observed that the appellant could establish her plea of discharge before the Executing Court. Such an approach is legally untenable. The Executing Court cannot travel beyond the decree or the Arbitral Award. The question relating to discharge of the contractual liability before passing of the award, or matters falling exclusively within the adjudicatory domain of the Arbitrator and, where necessary, the Court exercising jurisdiction under Section 34 of the A&C Act, 1996, they cannot be relegated to Execution Proceedings.

10.2. Further the contention of the learned counsel for the appellant is that the findings of the learned Single Judge exonerating the Power Agent from personal liability also call for interference. The question arising for consideration is whether the Court exercising jurisdiction under Section 34 of the A&C Act, 1996, could exonerate the Power Agent from liability by applying Section 230 of the Indian Contract Act, 1872, when such issue had neither been decided by the Arbitral Tribunal nor form part of the limited supervisoty jurisdiction under Section 34 of the A&C Act, 1996. It is undisputed that the Arbitral Tribunal rendered an award fastening liability upon the respondents in the Arbitral proceedings. While considering the challenge under Section 34 of the A&C Act, 1996, the Court held that the Power Agent could not be made personally liable by applying Section 230 of the Indian Contract Act and consequently exonerated the 1st respondent herein from liability, leaving the remaining award in tact. Such an approach cannot be sustained in law. Section 34 of the A&C Act, 1996, confers only a limited supervisory jurisdiction. The Court does not sit in appeal over the findings of the Arbitral Tribunal. It cannot re appreciate evidence, decide fresh issues, substitute its own findings, or modify the award except to the limited extent recognized by law. The Hon'ble Supreme Court has authoritatively held that Section 34 Court has no power to modify an Arbitral Award except for limited severance of invalid portion or corrections of clerical or computation errors (Ref: ***Gayathri Balasamy vs.***

***I.S.G. Novasoft Technoloties Ltd.).***



10.3. Whether a Power Agent incur personal liability under Section 230 of the Indian Contract Act depends upon the nature of the agency, the terms of the contract, the conduct of the parties, and the evidence on record. Such determination is essentially a question falling within the exclusive domain of the Arbitral Award. If the Arbitrator failed to decide the issue or decided it erroneously, the remedy of the Court under Section 34 of the A&C Act, 1996, is confined to the Courts enumerated therein. The Hon'ble Supreme Court's decision in ***Gayathri Balasamy vs. I.S.G. Novasoft Technoloties Ltd.,*** was delivered subsequently, hence, it does not validate the action of the Section 34 Court. Even prior to that decision, the settled principle was that proceedings under Section 34 of the A&C Act, 1996, were supervisory and not appellate and the Court could not substitute its own conclusions on merits. Therefore, by exonerating the Power Agent on the basis of Section 230 of the Indian Contract Act, Section 34 Court effectively modified the arbitral award and rendered a finding on a question reserved for adjudication by the Arbitrator. Such an exercise amounts to exceeding the jurisdiction vested under Section 34 of the A&C Act, 1996. Accordingly, this Court holds that the finding exonerating the Power Agent is without jurisdiction and liable to be set aside.

10.4. As rightly pointed out by the learned counsel for the appellant, while exercising the jurisdiction under Section 34 of the A&C Act, the 34 Court did not have the authority to modify Arbitral Award for the reason that the Award was passed on 07.07.2014 and the order of the Single Judge is dated 09.11.2017 and the 34 Court is governed by the law as it stood on that date.

10.5. For the foregoing reasons, the impugned order dated 09.11.2017 passed by the learned Single Judge in OP No.19 of 2015 is set aside. Consequently, the Arbitral Award dated 07.07.2014 is also set aside. The dispute is remitted for fresh adjudication before the same Arbitrator or before different Arbitrator appointed in accordance with the arbitration agreement or, failing such agreement, in accordance with law. The Arbitrator shall afford adequate opportunity to both parties to file their pleadings, adduce evidence, and advance oral submissions, and shall thereafter pass a reasoned award, uninfluenced by any observations contained in the earlier award or in this judgment.

In the result, the Original Side Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

**(P.V.,J.) (K.G.T.,J.)**
**16-07-2026**

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

BGA

To

Justice Thiru. A. Raman
NCB 7A PFK Raja Salai, R.A. Puram, Chennai.

**P.VELMURUGAN J.**
**AND**
**K.GOVINDARAJAN THILAKAVADI J.**

**BGA**

Pre delivery Judgment in

**OSA No. 87 of 2019**
**AND**
**CMP NO. 8575 OF 2019**

**16-07-2026**