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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.10.2026
Pronounced on	12.10.2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK. MUTHUKUMAAR

OSA No. 283 of 2021
CNR: {HCMA010709742021}

Case QR

1. A.V.Vijayakumar,(deceased)
2. E.Swarna
3. Ajayakumar

Anjana Edakunni
A2 to A4 brought on record as Lrs of the deceased first appellant vide order dt. 31.07.2026 made in CMP.No.13506 of 2022(PVJ and KGTJ)

..Appellant(s)

Vs

1. The Director
   M/s. Sharekhan Limited, Plot No.1012, Devidayal Compound, Next To Crompton And Greaves Limited, Ear Kanjurmarg, Railway Station, Kanjur Village Road, Kajurmarg (East), Mumbai - 400 042.

2. Paul V Das (Presiding Arbitrator)
   Panel of Appellate Arbitrators, National Stock Exchange Ltd., 8th Floor, Arihant Nitco Park, 90, Dr. Radhakrishnan Salai, Mylapore, Chennai 4.

3. A.V. Haridasan (Arbitrator)
   Panel of Appellate Arbitrators, National Stock Exchange Ltd., 8th Floor, Arihant Nitco Park, 90, Dr. Radhakrishnan Salai, Mylapore, Chennai 4.

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4. K.K. Balu (Arbitrator)
Panel of Appellate Arbitrators, National Stock Exchange Ltd., 8th Floor, Arihant Nitco Park, 90, Dr. Radhakrishnan Salai, Mylapore, Chennai 4.

..Respondent(s)

This Original Side Appeal is filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent and Section 37(1)(c) of Arbitration and Conciliation Act, 1996, to set aside the order dated 02.02.2021 passed in O.P.No.216 of 2016.

For Appellant(s): Ms.M.Punnagai for
Mr.Hari Radhakrishnan

For Respondent(s): Ms.Meera Gnanasekar for R1

JUDGMENT

(Judgment of the Court was delivered by GK. Muthukumaar J.)

This Original Side Appeal has been filed challenging the order dated 02.02.2021 passed by the Learned Single Judge of this Court in O.P.No.216 of 2016.

2. The claimant is the appellant before this Court. For the purpose of convenience, the appellant and 1st respondent herein shall hereinafter be referred to as the Claimant and the Respondent respectively.

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3. The case of the claimant is that he is a senior citizen and practicing doctor at Thrissur, Kerala. He had opened a depository account with the first respondent with regard to the dematerialization of his shares and for related activities. His grievance was that without his consent, his shares were sold by the first respondent even in the absence of duly authorized contract notes signed by him, authorizing the first respondent to deal with and transfer his shares. Being aggrieved by the act of the respondent, the claimant had initiated arbitration.

4. However, the first respondent vehemently denied the said contention and countered that the first respondent had dealt with the shares of the claimant only as per the claimants authorisation and that due intimation of the same was provided to the claimant by e-mails sent to his registered e-mail ID. However, since the claimant had not registered his mobile number with the respondent, intimation by SMS could not be sent.

5. Upon arbitration of the dispute, the Arbitrators who are the respondents 2 to 4 herein dismissed the claim. The claimant therefore preferred an appeal before the Panel of Appellate Arbitrators. The Panel of Appellate Arbitrators passed an award directing the first respondent to pay a sum of Rs.12,50,053/- with 18% interest from the date of award till the date of realization, to the claimant.

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6. However, being still aggrieved the claimant preferred an appeal under Section 34 of the Arbitration and Conciliation Act, 1996 (The Arbitration Act) before this Court praying to set aside the award of the Panel of Appellate Arbitrators to the extent of denying 50% of the lost shares of the claimant and for costs of the proceedings.

7. However, in the Section 34 appeal, we find that the Learned Single Judge had decided only the issue of jurisdiction of this Court to entertain the Section 34 appeal and held that this Court does not have jurisdiction to entertain the Section 34 appeal and hence, dismissed the same directing the claimant to present the appeal before the Bombay High Court, if so choosen.

8. Being aggrieved by the same, the claimant has preferred this section 37 appeal before us.

9. Heard Ms.M.Punnagai, Learned Counsel for the claimant and Ms.Meera Gnanasekar, Learned Counsel for the first respondent.

10. The primary contention of the learned counsel for the claimant is that as per the depository contract, Trading regulations and the bye-laws of the National Stock Exchange of India Limited (in short "National Stock

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Exchange"), this Court has jurisdiction to entertain the Section 34 appeal and hence it was grossly erroneous on the part of the Learned Single Judge to have dismissed the Section 34 appeal on jurisdictional grounds and directing the claimant to move the Bombay High Court.

11. The learned counsel for the first respondent, however, defended the order of the Learned Single Judge and stated that the first respondent had already invoked the jurisdiction of the Bombay High Court and filed an Original Petition under Section 34 challenging the order of the Appellate Arbitrators. The learned counsel would also rely on Section 42 of the Arbitration Act, to contend that the jurisdiction in this lis vested only with the Bombay High Court and not this Court. She would also rely upon the depository contract, trading regulations and bye-laws between the parties to buttress her submissions.

12. Upon hearing the learned counsel for both the contesting parties, we find that, though the Section 34 appeal has been preferred by the claimant raising many grounds, only the issue of jurisdiction of this Court was adjudicated upon in the Section 34 appeal. In this appeal also, the counsel have addressed the issue of jurisdiction alone and no other ground was canvassed before us.

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13. So, the issue which arises for determination in this appeal is whether the Learned Single Judge of this Court has jurisdiction to entertain the Section 34 appeal. In this regard, it is necessary to analyse the depository contract, trading regulations and byelaws of the National Stock Exchange which form the binding contract between the parties.

14. The analysis of the pleadings and documents reveal that the claimant and the first respondent had initially entered into a depository agreement dated 13.02.2006. The said agreement in Clause 1.7.13 provides for arbitration of any dispute arising between the parties under that agreement. Clause 1.7.13 providing for arbitration reads thus;

> *"The client and the stock broker agree to refer any claims and /or disputes to arbitration as per the Rules, Byelaws and Regulations of the Exchange and circulars issued thereunder as may be in force from time to time."*

Further, Clauses 22 and 1.7.18 pertain to jurisdiction of Courts.

Clause 22 reads as follows:

> *"22. Jurisdiction:*
>
> *Subject to clause 1.7.18 hereinabove courts in Mumbai shall have exclusive jurisdiction for the purpose of giving effect*

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to these provisions."

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Clause 1.7.18 reads as follows:

> *"1.7.18. The stock broker and the client declare and agree that the transactions executed on the Exchange are subject to Rules, Bylaws and Regulations and circulars issued thereunder of the Exchange and all parties to such trade shall have submitted to the jurisdiction of such Court as may be specified by the Byelaws and Regulations of the Exchange for the purpose of giving effect to the provisions of the Rules Bye laws and Regulations of the Exchange and the circulars issued thereunder."*

15. A combined reading of both the aforesaid clauses reveal that the Courts in Mumbai will have exclusive jurisdiction for the purpose of deciding any dispute arising under the depository agreement. However, this is subject to the jurisdiction clause as specified in the bye-laws and regulations of the exchange.

16. In view of which, it becomes relevant to have a look at the jurisdiction clause in the bye-laws and the regulations.

17. The regulations, called the trading regulations, provided for arbitration under Clause 5. Further, jurisdiction of Courts has been spelt out in

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Clause 5.3, which reads as follows:

"5.3.Jurisdiction of Courts:

> *For the purpose of Bye-law 17 of Chapter XI of the Byelaws of the Exchange, the application under Section 34 of the Act, if any, against the decision of the Appellate Arbitrator shall be filed in the competent court nearest to such regional centre where the Appellate Arbitral proceedings have been conducted."*

Therefore, from the above, it is evident that the trade regulations stipulate that Section 34 applications shall be filed in the competent court which is nearest to the regional centre where the Appellate Arbitral Proceedings have been conducted. This however is for the purpose of bye-law 17 under chapter 11 of the bye-laws of the stock exchange.

18. From the above, it is discernable that, for purpose of bye-law 17 as mentioned above, in this instant case, the competent court nearest to the regional centre where the Appellate Arbitral proceedings have been conducted would be this Court, i.e., the Learned Single Judge of this Court. This is because the award which is the subject matter of the Section 34 appeal was passed by the Panel of Appellate Arbitrators in Chennai, within the jurisdiction of this Court.

19. However, before we could come to a definite conclusion, it is necessary to have a look at bye-law 17. The bye-laws of the National Stock Exchange at Chapter 11 provides for arbitration of disputes. Under this chapter,

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Clause 17 deals with the jurisdiction of Courts and it reads as follows:

> *"The arbitration and appellate arbitration shall be conducted at the regional centre nearest to the address provided by Constituent in the KYC form or as per the change in address communicated thereafter by the Constituent to the trading member. The application under Section 34 of the Act, if any, against the decision of the Appellate Arbitral Award passed by the Appellate Arbitrator shall be filed in the competent Court nearest to the address provided by Consituent in the KYC form or as per the change in address communicated thereafter by the Consituent to the trading member."*

20. From a reading of Clause 17 of the bye-laws, it is clearly evident that the arbitration and appellate arbitration shall be conducted at the regional centre of the National Stock Exchange, which is nearest to the address provided by the constituent (Claimant) in the KYC form. The address of the claimant as provided in the KYC form is Deepa Clinic, Thiruvilwamala, Thrissur District 680 588, Kerala State. The regional centre nearest to this address is the one in Chennai.

21. That apart, Clause 17 further stipulates that Section 34 applications against the decision of the Appellate Arbitral Award shall be filed in the competent Court which is nearest to the address provided by the constituent in

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the KYC form which in this instant case is Chennai.

22. Therefore, from the above, we find that the Section 34 appeal in this instant case would have to be filed in Chennai before this Court.

23. A combined analysis of,

(a) the depository agreement,

(b) trading regulations and

(c) the bye-laws of the National Stock Exchange,

would reveal that the depository agreement at Clause 22 on jurisdiction states that the Courts in Mumbai shall have exclusive jurisdiction for the purpose of giving effect to these provisions. This however is subject to Clause 1.7.18 of the very same agreement. Now, we find that Clause 1.7.18 of the depository agreement states that the jurisdiction of Courts shall be as specified in the bye-laws and regulations of the exchange.

24. Therefore, the jurisdiction clause specifying the Courts in Mumbai as mentioned in Clause 22 of the depository agreement is subject to the jurisdiction of Courts as specified in the bye-laws and regulations.

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25. From Clause 5.3 of the trading regulations and Clause 17 of the bye-law, it is amply clear that for the purpose of filing the Section 34 application, the competent Court would be the Court which is nearest to the regional centre where the appellate arbitral proceedings have been conducted which in this instant case is Chennai, as is clearly evident from the award of the Appellate Arbitral Tribunal, which mentions the place of the Appellate Arbitral proceedings as Chennai.

26. Therefore, this Court finds that the jurisdiction of the Court for purpose of the Section 34 application would be that of this Court in Chennai.

27. However, before proceeding to hold so, we also intend to look into the impact of Section 42 of the Arbitration Act, in view of the contention raised by the learned counsel for the respondent, in this regard. Section 42 of the Arbitration Act reads as follows:

> *"**Jurisdiction-**Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."*

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28. From the above provisions, it is clear that any application under this Part (the Section 34 application in this case) with respect to an arbitration agreement is made to a Court, then that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings in relation thereto shall have to be made only in that Court and not in any other Court.

29. Relying on the same, the learned counsel for the respondent would contend that since the Section 34 application had already been filed by the first respondent before the Bombay High Court and the same is pending, the subsequent Section 34 application filed by the claimant herein before this Court is not maintainable.

30. In view of this contention, it becomes necessary to take a closer examination of Section 42. Upon a careful examination of Section 42, we no doubt find that when a Section 34 application has been first made to a Court, it is only that Court which will have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitrary proceedings shall proceed only in that Court and not in any other Court. However, we find that this is subject to what is stated in the arbitration agreement.

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31. The use of the words, "*where with respect to an arbitration agreement any application under this Part has been made in a Court*" in the first part of Section 42 would have to be interpreted to mean the competent jurisdictional Court upon which jurisdiction is conferred as per the arbitration agreement to be the first Court and not the Court where the proceedings are first initiated if this Court where proceedings are first initiated is not the Court mentioned in the arbitration agreement. In other words, the first Court where proceedings are first initiated should also be the Court on which jurisdiction is conferred under the arbitration agreement. If the first Court does not have jurisdiction conferred under the arbitration agreement then it will not be the Court mentioned in Section 42 even if the proceedings are first initiated therein.

32. In view of our aforesaid finding in this instant case, we find that under the depository agreement, the trade regulations and the bye-laws, which from the binding contract between the parties, it is only this Court in Chennai which will have jurisdiction to entertain the Section 34 application. Therefore, a holistic analysis of Section 42 will mean that it is only the Court as mentioned in the arbitration agreement which will have exclusive jurisdiction to entertain the Section 34 application and not the Court where the Section 34 application was first filed, if this Court where the proceedings were first filed is not the Court mentioned in the arbitration agreement.

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33. Therefore, in this instant case, we find that, though the Section 34 application was first filed by the first respondent in the Bombay High Court, the said Court is not the jurisdictional Court as stipulated under the said agreements (depository agreement, trading regulations and bye-laws). Further, upon an analysis of Section 42 also, we find that it is only this Court (Madras High Court) which is the Court of competent jurisdiction as per the said agreements (depository agreement, trading regulations and bye-laws) under which the parties are bound. Therefore, the submissions of the learned counsel for the first respondent as regards the applicability of Section 42 is incorrect and going by Section 42 also we find that Section 42 only favours the claimant and renders the Section 34 application maintainable only before the Learned Single Judge of this Court and not before the Bombay High Court.

34. We also find that, in circumstances where two Courts simultaneously have jurisdiction under the arbitration agreement, then it is only in such circumstances that the Court where the arbitral proceedings were first initiated will have jurisdiction and not the other court if any proceedings are subsequently initiated therein. However, this is not the factual situation in this instant case. Therefore, going by the said agreements (depository agreement, trading regulations and the bye-laws), we find that only this Court in Chennai has exclusive jurisdiction to entertain applications arising out of the arbitration agreement. The Bombay High Court is not the Court of competent jurisdiction.

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We also find that it is only the Court of competent jurisdiction which can be considered for the latter part of Section 42. Therefore, if the proceedings are first initiated in a Court without jurisdiction as in this instant case, then, though this might be the Court where the Section 34 application was first filed, still under Section 42, the said Court would not be the jurisdictional Court.

35. In view of the above, we find that it was totally erroneous on the part of the Learned Single Judge to give a finding that it is only the Bombay High Court which will have jurisdiction and not this Court with regard to entertaining the Section 34 application.

36. Therefore, we hold that it is only this Court which is conferred exclusive jurisdiction under the depository agreement, the trading regulations and the bye-laws which constitute the binding contract between the parties and also under Section 42 of the Arbitration Act for purpose of arbitral proceedings and not the Mumbai High Court, where the proceedings were first filed. We further hold that, the Mumbai High Court will not fall within the ambit of Section 42 as it is not the Court of competent jurisdiction as specified under the depository agreement, trade regulations and bye-laws. Therefore, we find that the order of the Learned Single Judge is contrary to the agreement between the parties and contrary to the law as stipulated under Section 42 and hence, the judgment in appeal in its entirety is set aside and this appeal is allowed.

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37. Since there was no other point agitated before us or before the Learned Single Judge, we set aside the judgment in appeal and remand the matter back to the Learned Single Judge for consideration of the Section 34 application on merits and in accordance with law. In the facts and circumstances of the case, the parties are directed to bear their own costs.

(N.S.K.,J.) (G.K.M.,J.)
12-10-2026

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

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To

The Sub Assistant Registrar (Original Side),
High Court of Madras,
Chennai.

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N.SATHISH KUMAR, J.
AND
GK.MUTHUKUMAAR, J.

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A Pre-delivery Judgment in
OSA No. 283 of 2021

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