



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

CIVIL MISC. PETITION NO.428 OF 2025

BETWEEN:

1. M/S A V PARAMASHIVAN
A PARTNERSHIP FIRM
HAVING ITS OFFICE AT
NO.70/73, MIND SPACE APARTMENT
GROUND FLOOR,
ERANAPALYA
ARABIC COLLEGE POST
BENGALURU 560 095
REPRESENTED BY ITS PARTNER
SRI. P. JAYACHANDRA.

...PETITIONER

(BY SRI. RANJAN KUMAR K., ADVOCATE)

AND:

1. THE CHAIRMAN
M/S FOURESS ENGINEERING (INDIA) LTD.
MAHALAKSHI CHAMBERS
22, BHULABAI DESAI ROAD
MUMBAI.
2. M/S FOURESS ENGINEERING
(INDIA) LIMITED PLOT NO.2,
PHASE II, PENYA INDUSTRIAL AREA
BANGALORE 560 058.



3. MRS. SMITHA SHETTY
MANAGING DIRECTOR
M/S FOURESS ENGINEERING
(INDIA) LIMITED
PLOT NO.2, PHASE II,
PENYA INDUSTRIAL AREA
BENGALURU - 560 058.
4. MR. ARUN N. SHETTY
CHIEF GENERAL MANAGER (HRD & ADMN)
M/S FOURESS ENGINEERING (INDIA)
LIMITED PLOT NO.2, PHASE II,
BENGALURU - 560 058.

...RESPONDENTS

(BY SRI. SUBRAHMANYA M K.,ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO APPOINT A SOLE ARBITRATOR TO ARBITRATE THE DISPUTE BETWEEN THE PETITIONER AND RESPONDENTS AS PER THE CLAUSE 18.1 OF THE ARTICLES OF AGREEMENT DATED 17.12.2010 (ANNEXURE - A).

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH



ORAL ORDER

In this writ petition, the petitioner has sought appointment of an Arbitrator in terms of Clause 18(1) of the Articles of Agreement dated 17.12.2010 (Annexure-A).

2. Heard Sri Ranjan Kumar K., learned counsel appearing for the petitioner, and Sri Subrahmanya M.K., learned counsel appearing for the respondents.

3. It is contended by the learned counsel for the petitioner that the petitioner had earlier raised a claim for a sum of Rs.1,41,29,426.26/- along with interest. The respondents had filed a counterclaim for Rs. 2,27,49,484.17. The learned Arbitrator, by award dated 23.07.2014, partly allowed the claim of the petitioner and awarded a sum of Rs.31,20,699.50/- with accrued interest.



4. It is further argued that, aggrieved by the said award, respondent Nos.1 to 4 preferred A.S. No.109 of 2014 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the 'Act') before the jurisdictional Court. By judgment dated 20.02.2020, the said petition was allowed in part and the award was modified. The petitioner herein challenged the aforesaid judgment in MFA No.3907 of 2020 under Section 37 of the Act. This Court, by order dated 03.12.2024 (Annexure-B), dismissed the appeal, while observing in paragraph 8 that the question of claiming any relief with regard to the difference in the final bill was kept open.

5. On the basis of the said observation, the petitioner issued a notice dated 24.03.2025 (Annexure-D) seeking reference of the alleged dispute



to arbitration and has now sought appointment of an Arbitrator.

6. Per contra, learned counsel for the respondents submitted that the dispute between the parties has already been adjudicated by the learned Arbitrator; the award has been subjected to proceedings under Sections 34 and 37 of the Act; and the matter has attained finality upon dismissal of MFA No.3907 of 2020. It is contended that appointment of a second Arbitrator on the very same cause of action would amount to splitting of cause of action, which is impermissible in law. In this regard, learned counsel for the respondents placed reliance on the judgment of the Hon'ble Supreme Court in ***Tantia Construction Limited v. Union of India*** (SLP (C) No.10722 of 2022, decided on 15.07.2022) and in the case of ***M.P. Housing and Infrastructure Development Board***



and another vs. K.P. Dwivedi reported in **(2022) 3 SCC 783**, and contended that once the claims arising out of a contract have been adjudicated and have attained finality, a fresh arbitral Tribunal on the same cause of action is barred and hit by the doctrine of res-judicata/estoppel.

7. Having considered the submissions made by the learned counsel appearing for the parties, it is not in dispute that the parties entered into an Articles of Agreement dated 17.12.2010 and Clause 18(1) thereof provides for resolution of disputes under the Arbitration and Conciliation Act, 1996. It is also not in dispute that an Arbitrator was appointed, the disputes were adjudicated, and an award was passed on 23.07.2014. The said award was challenged under Section 34 of the Act, in A.S. No.109 of 2014 and was modified by judgment dated 20.02.2020. The award



passed therein was challenged under Section 37 of the Act in MFA No.3907 of 2020 before this court and the same came to be dismissed by this Court on 03.12.2024. It is relevant to extract paragraph 8 of the said judgment:

"We say nothing on the submissions made by the learned counsel for the appellant, and the respondents No.1 to 4, as it is for the appellant if so advise seek such remedy as available in law and for the respondents, to contest the same if any claim is made and entertained".

8. Taking into consideration the observations made by this Court in MFA No. 3907 of 2020 and also the fact that the claim now sought to be raised by the petitioner with regard to the alleged difference in the final bill had already been adjudicated before the learned District Judge in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, and the said adjudication has attained finality upon dismissal



of the appeal by order dated 03.12.2024 in the aforesaid MFA No.3907 of 2020, the petitioner cannot be permitted to reagitate the very same claim in the present proceedings. Merely because an observation was made that a question was kept open, the petitioner cannot be permitted to reagitate the very same issue by seeking appointment of a second Arbitrator, which would amount to splitting up the cause of action and reopening of the concluded proceedings. In this regard, it is relevant follow the declaration of law made by the Hon'ble Supreme Court in the case of ***M/s. Tantia Construction Limited*** (supra), which reads as under:

" Having heard the learned counsel for the petitioner, we are of the firm opinion that there cannot be two arbitration proceedings with respect to the same contract/transaction. It is not in dispute that in the present case, earlier the dispute was referred to arbitration and the Arbitrator passed an award on whatever the claims were made. Thereafter, a fresh



arbitration proceeding was sought to be initiated with respect to some further claims, may be after final bill. The same is rightly refused to be referred to arbitration in exercise of Section 11(6) of the Arbitration and Conciliation Act, 1996. We are in complete agreement with the view taken by the High Court. "

9. In view of the law laid down by the Hon'ble Supreme Court that once claims under a contract have been adjudicated and have attained finality, a fresh reference to arbitration on the same cause of action is not maintainable, this Court is of the opinion that the present petition is devoid of merit. Accordingly, the writ petition stands ***dismissed***.

**SD/-
(E.S.INDIRESH)
JUDGE**

SB
List No.: 1 Sl No.: 25