

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED 05.07.2017****CORAM****THE HONOURABLE DR. JUSTICE ANITA SUMANTH****O.P.NO.91 OF 2017**

RPN Engineers Chennai Private Limited,
represented by its Managing Director,
M-60, 9th Street, Anna Nagar East,
Chennai 600 102.

Petitioner

Vs

1. The Union of India,
represented by the General Manager,
Southern Railway, Park Town,
Chennai -3.

2. The Deputy Chief Engineer-I (Construction),
Southern Railway, Near My Lady's Garden,
Southern Railway, Park Town, Chennai-3.

3. Mr. K. Ramasubramonia Pillai
(Presiding Arbitrator),
The Deputy Financial Adviser and
Chief Accounts Officer,
Southern Railway, Head-Quarters,
Chennai-3.

4. Mr. P. Mani (Arbitrator),
The Deputy Chief Electrical Engineer/G/CN,
Southern Railway (Construction),
Egmore, Chennai-8.

5. Mr. R. Amalraj (Arbitrator),
The Deputy Chief Engineer (Works),
Southern Railway (Construction),
Egmore, Chennai-8.

.. Respondents

Petition filed under Section 14, 15 r/w. Sec-15 of the Arbitration and Conciliation Act, 1996 praying to terminate the mandate of the present Tribunal (comprising of the 3rd, 4th and 5th Respondents) and appoint an independent Arbitrator to arbitrate all the claims arising out of the Agreement No.72/Dy.CE/CN/MAS/2012 dated 21.3.2012 to Arbitration.

For Petitioner : Mr. Amalaraj S.Penikilapatti

For Respondent: Mr.T. Ramkumar

ORDER

This Petition is filed praying for termination of the mandate of the present Tribunal (comprising of 3rd, 4th and 5th respondents) and appointment of an independent Arbitrator to arbitrate upon the claims arising out of Agreement No. No.72/Dy.CE/CN/MAS/2012 dated 21.3.2012.

2. The petitioner filed original petition in O.P.No.595 of 2015, that was ordered by this Court vide order dated 9.10.2015 referring the issues to a panel of Arbitrators stating that the Arbitral Tribunal will endeavour to conclude the arbitration proceedings, preferably within a period of six months from the first date of sitting after the reference was made.

3. The case of the petitioner now is that the Arbitral Tribunal has defaulted in carrying out the mandate imposed upon it by this Court vide order dated 9.10.2015, in so far as the proceedings have been completed only on

20.2.2017, that too, after the present Original Petition was filed. It was pointed out that the first sitting was on 24.3.2016 and as such the award ought to have been passed within six months therefrom.

4. Additionally, the learned counsel for the petitioner points out that there were serious delays on the part of the Tribunal in the disposal of the matter. In all, the attempt was to persuade the Court to terminate the mandate of the constituted Tribunal as per order dated 9.10.2015 and appoint an independent arbitrator afresh to arbitrate upon the claims arising between the parties.

5. In response, Mr.P.T.Ramkumar, would point out that in so far as the award has been passed on 20.2.2017, nothing further survives in this petition. If at all any remedy is available to the petitioner, it is only by way of challenge to the Award dated 20.2.2017 under section 34 of the Arbitration and Conciliation Act 1996 (in short 'Act'). He would further point out that the Award passed was partly in favour of the petitioner and the petitioner has received the amounts awarded to him in terms of Award dated 20.2.2017.

6. Heard learned counsel.

7. Sub Section (1) of Section 29A of the Act provides for a period

of 12 months from the date of entering reference for the passing of an award. The period of 12 months in this case, expires on 12.3.2016. That apart, when this petition came up for admission on 27.1.2017, it has been noticed that the award was imminent and it has, in fact, been passed on 10.2.2017. Though the extension of 6 months provided under section 29A(2) is only upon consent of parties, it is a fact that the award has not been duly passed, but that the petitioner has enjoyed the part relief provided under thereunder. The petitioner is at liberty, if he chooses to challenge the award under section 34 of the Act, in so far as it adverse to him in accordance with law.

8. This Original Petition is dismissed. No costs.

05.07.2017

Speaking Order/non-speaking order

Index:yes/No

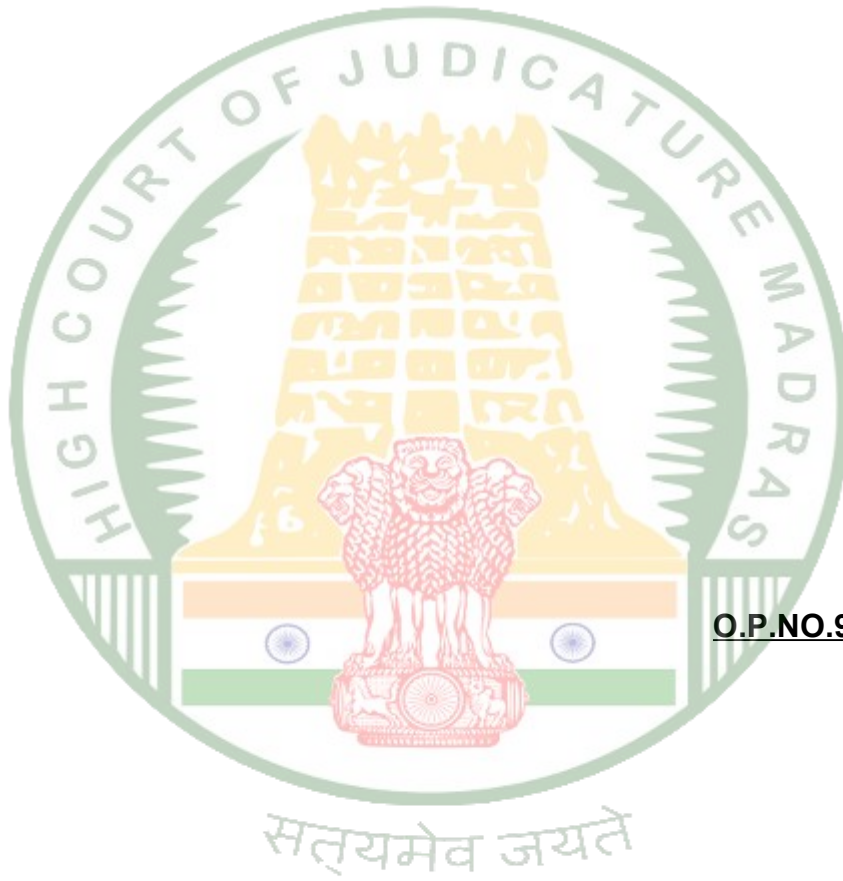
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Note:

Extension of time is one week for remitting cost memo if not already filed.

DR. ANITA SUMANTH, J.

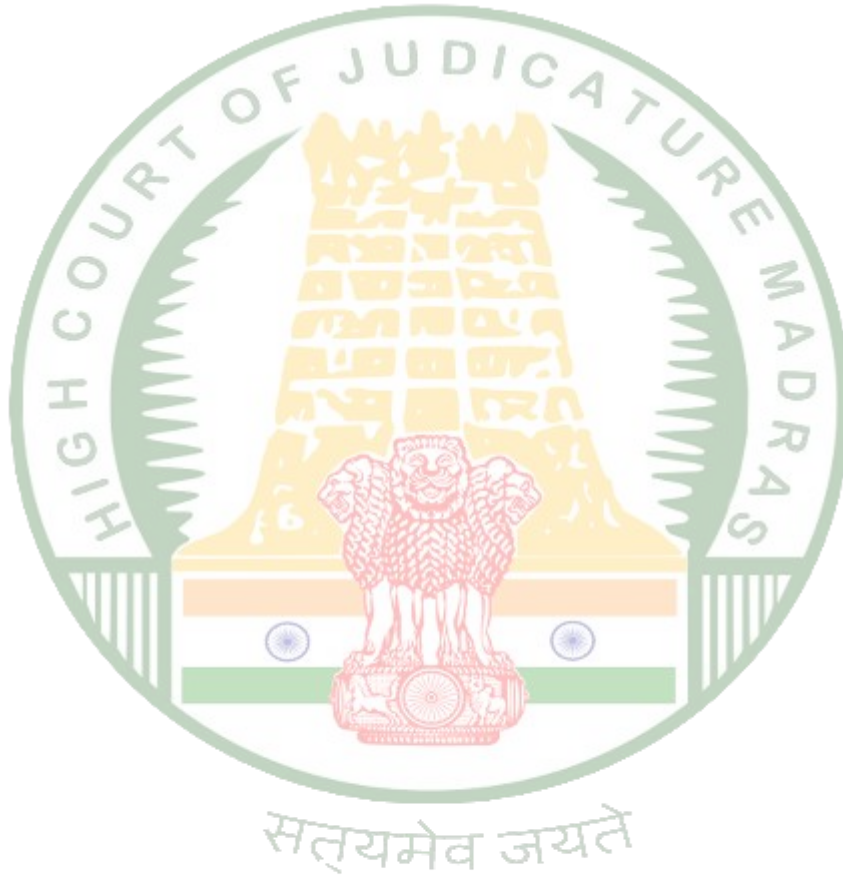
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