

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.484 of 2011

1.Union of India, represented by
The General Manager,
Southern Railway, Park Town,
Chennai-600 003.

2.The Chief Engineer/Construction,
Office of the Chief Administrative Officer,
(Construction), Southern Railway,
Egmore, Chennai-600 008..

..Petitioners

Vs.

1.M/s Veeyar Enterprises,
Represented by its Managing Partner,
Mr.S.J.Alphonse, Old No.16, New No.31,
Spur Tank Road, Chennai-600 031.

2.Mr. Justice P.R.Gokulakrishnan,
Chief Justice (Retd.),
No.7, Anna Avenue,
Bhaktavatsalam Nagar Extention,
Adyar, Chennai-600 020.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and

Conciliation Act, 1996, to set aside the Award passed by the second
respondent dated 19.04.2010 made in relation to the disputes arising out

of Agreement No.147/CN/2003 dated 15.05.2003 between the petitioner and the first respondent insofar as the Award towards pre-reference/pendente-lite interest at 18% per annum on the net award amount for the period from 15.05.2005 to 19.04.2010 amounting to Rs.12,90,783/- under claim No.9.

For Petitioners : Mr.P.T.Ramkumar

For Respondents : Mr.V.Sivakumar for R1

ORDER

The petitioners called for tenders for earth work in forming/widening bank in formation, cutting and reconstruction of minor bridges including casting of pre-cast RCC Box Segments of various spans in Kumbakonam and Thanjavur Section. The first respondent was awarded a contract and accordingly, an agreement was executed on 15.05.2003. The total value of the contract was Rs.1,32,43,758/-.

2. Alleging that the petitioners failed to discharge their duties, a sum of Rs.63,58,914/- was claimed by the first respondent before the Arbitrator. In the arbitration proceedings, after going through the relevant materials, the Arbitrator has awarded a sum of Rs.15,09,690/- with interest at 18%

per annum. Though the award amount has been paid, this petition has been filed being aggrieved over the interest portion alone.

3. The learned counsel appearing for the petitioners would submit that in view of Clauses 16.2 and 65.5 of General Conditions of Contract, which form part of the agreement, no interest is payable in respect of any sum due under the contract. In support of his contention, reliance has been made on the decision of the Apex Court in **UNION OF INDIA V. M/S AMBICA CONSTRUCTION (2016 (3) R.A.J. 1 (SC))**.

4. The learned counsel appearing for the first respondent would submit that delay has been occurred due to inaction on the part of the petitioners and therefore, there is no wrong in awarding interest.

5. Clause 16.2 of the General Conditions of Contract states as follows:

“16(2)-No interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon.”

6. Clause 64.5 of the of the General Conditions of Contract inter alia restrained the Tribunal from awarding interest prior to the award. Thus, this Court is of the view that the Tribunal has committed an error in awarding interest. A similar view has also been by the Apex Court in **UNION OF INDIA V. M/S AMBICA CONSTRUCTION (2016 (3) R.A.J. 1 (SC))**, in which, considering the similar issue, it has held as follows:

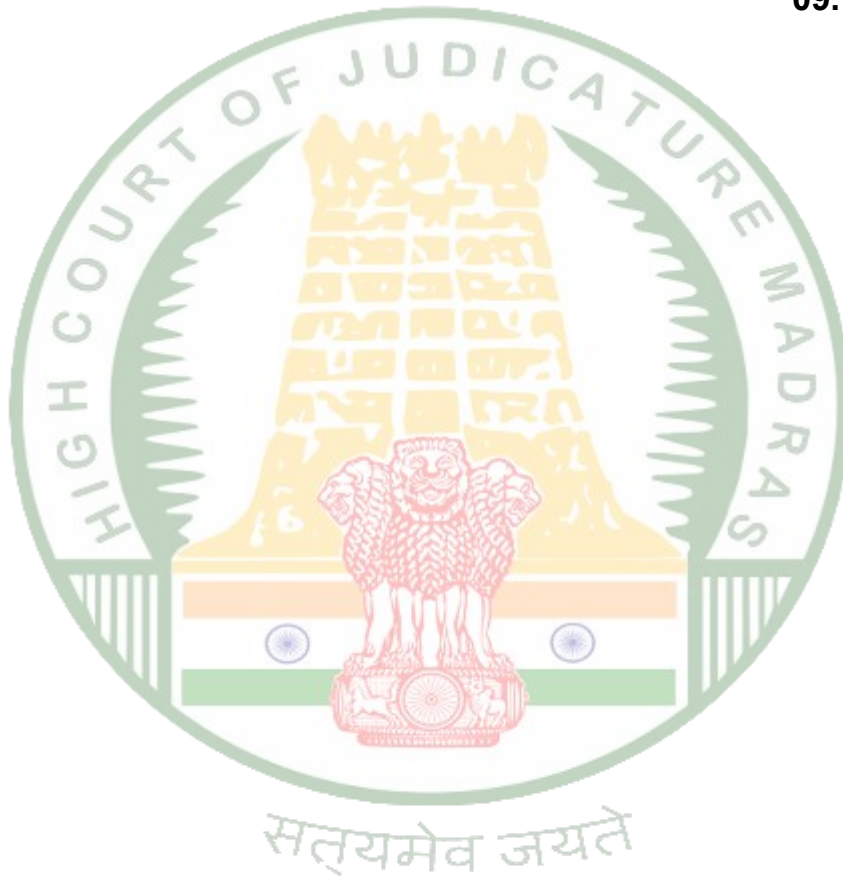
“23. The decision in Madnani Construction Corporation (supra) has followed decision in Engineers-De-Space-Age (supra). Same is also required to be diluted to the extent that express stipulation under contract may debar the Arbitrator from awarding interest pendente lite. Grant of pendente lite interest may depend upon several factors such as phraseology used in the agreement, clauses conferring power relating to arbitration, nature of claim and dispute referred to Arbitrator and on what items power to award interest has been taken away and for which period.”

7. In such view of the matter, this Court is inclined to set aside the award passed by the second respondent viz., the learned Arbitrator, in

respect of interest portion alone. Accordingly, the award passed on 19.04.2010 is set aside to the extent indicated above and the original petition stands allowed.

09.11.2017

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M.M.SUNDRESH,J.



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