

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2017

DELIVERED ON : 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

O.S.A. Nos.414 and 415 of 2008

- 1 M/S SATYA METAL INDUSTRIES  
1046 SHREE VENKATESWARA TOWER INDUSTRIAL  
AREA JALANDHAR PUNJAB ... Appellant in both
- Vs
- 1 UNION OF INDIA  
REP BY DIRECTORATE OF SUPPLIES AND DISPOSALS  
DEPARTMENT OF SUPPLY SHASTRI BHAWAN CHENNAI  
600 006
- 2 SHRI B.L.NISHAD  
ADDL LEGAL ADVISOR TO THE GOVT OF INDIA AND  
SOLE ARBITRATOR DGS&D NEW DELHI  
... Respondents in both

Common Prayer;

Appeals filed against the Fair and Decretal Order of this Court dated 10.6.2008 in Tr.O.P.Nos.577 of 2006 and 632 of 2006 on the file of this Court.

Tr.O.P.577 & 632 of 2006: filed Under Section 34 of Arbitration and Conciliation Act 1996 to set aside the award No.13/m/1999 and award No.14m/1999 respectively dated 11.9.2000 passed by the second respondent and directing the first respondent to pay costs.

|                 |                            |
|-----------------|----------------------------|
| For appellant   | : Mr.S.Kasirajan           |
| For respondents | : Mr.V.Venkatesan, for R-1 |
| R2              | : Arbitator                |

## COMMON JUDGMENT

K.K.SASIDHARAN, J

These two intra court appeals are directed against the common order dated 10 June 2008 in Tr.O.P.Nos.577 and 632 of 2006 setting aside the award passed by the Arbitrator, on the ground that clause 18(a) of the Conditions of contract empowers the Department of Supply to exercise lien in respect of claims pending finalization of adjudication of any other claim.

The facts:-

2. The appellant entered into a contract with the first respondent for supply of water fittings vide rate contract dated 17 September 1996. The first respondent placed three orders dated 27 March 1997, 5 May 1995 and 12 May 1997. The appellant made supplies pursuant to the supply orders. However, payment was not made by the first respondent. The appellant therefore made a claim. Since there was a provision for arbitration, the matter was referred to the Arbitration of Thiru.B.L.Nishad, Additional Legal Adviser to the Government of India at New Delhi.

3. The arbitrator passed two awards dated 11 September 2000 in Award Nos.13/M/1999 and 14M/1999. The amount payable to the appellant was determined by the Arbitrator.

4. The awards were challenged by the first respondent before the learned Single Judge invoking Section 34 of the Arbitration and Conciliation Act, 1996.

5. The learned Single Judge set aside the award solely on the ground that the Department of Supply is entitled to exercise the lien under clause 18A of the conditions of contract. According to the learned Judge, since the first respondent is entitled to exercise the lien and there is a counter claim preferred by the Government, there is no need to pay the amount in view of Clause 18A of the Contract. The learned Judge passed a common order dated 10 June 2008, setting aside the separate awards passed by the Arbitrator. Feeling aggrieved, the appellant is before this Court.

Submissions:-

6. The learned counsel for the appellant contended that no money was not due from the appellant to the first respondent and as such, the learned Single Judge was not correct in placing reliance on Clause 18(A) of the Arbitration and Conciliation Act. According to the learned counsel, even if there is a lien, still, it was not open to the Court exercising jurisdiction under Section 34 of the Arbitration Act, to set aside the award. The learned counsel further contended that only on certain

specific grounds, award could be set aside. However, the learned single Judge set aside the award by placing reliance on the clause regarding lien. The common order is therefore liable to be set aside.

7. The learned counsel for the first respondent justified the order passed by the learned Single Judge. According to the learned counsel, in view of Clause 18(A) of the terms and conditions of the contract, the first respondent is not liable to pay the amount to the appellant.

Point for consideration :-

8. The only point that arises for consideration is as to whether the learned Single Judge was correct in setting aside the awards on the ground that the first respondent is entitled to exercise the lien under clause 18(a) of the conditions of contract.

Discussion:-

9. The appellant is a small scale industry. The documents available on record indicates that the appellant entered into a contract with the first respondent for supply of water fittings vide Rate Contract dated 17 September 1996. The first respondent pursuant to the rate contract, issued supply orders. The appellant, on receipt of those orders, commenced manufacturing activities and materials were sent through railways.

10. The appellant is entitled to 98% of the payment for the supplies on proof of inspection and remaining 2% has to be paid on receipt of goods by the first respondent.

11. Since payment was not made in spite of making supplies, the appellant invoked the arbitration clause. The first respondent appointed the second respondent as the sole arbitrator to decide the dispute.

12. Before the Arbitrator, the appellant filed a claim statement containing the details of the claim. The first respondent contended that it is the responsibility of the appellant to explain the reasons for non payment and in case it was a genuine claim, the Department would have considered it and sorted it out within the frame work of the conditions of contract.

13. The first respondent in paragraph 4 of the counter statement contended that the paying authority, viz., Chief Controller of Accounts, Department of Supply, New Delhi, informed the appellant that payment has been withheld along with 15 other supply orders in connection with earlier Rate Contract, in which there was a dispute between the Government and the

appellant herein. The appellant was informed of this factual position and as such, it is not possible to release payment at this point of time.

14. The arbitrator decided the claim on the basis of the materials available on record. The substantial issue before the Arbitrator was whether the first respondent was liable to pay the amount indicated in the invoices marked as documents. The Arbitrator decided the matter on the basis of the materials placed by the authorities. Liability to pay the amount to the appellant was not disputed by the first respondent at any point of time before the arbitrator. In short, the first respondent clearly admitted the liability. However, the first respondent maintained that in view of the connected dispute between the appellant and the Government, they are entitled to exercise the lien, meaning thereby, there is no need to pay the amount at present. The arbitrator on the basis of the materials available passed two awards dated 11 September 2000.

15. The awards were challenged in Tr.O.P.Nos.577 and 632 of 2006. The learned Single Judge was expected to consider the award in the light of Section 34 of the Arbitration and Conciliation Act and the principles evolved by the Courts.

16. The learned single Judge set aside the awards on the sole ground that the first respondent is entitled to exercise the lien. The question of exercise of lien would arise only at the time of demanding payment, determined by the Arbitrator or Court. The Arbitrator decided only the claim made by the appellant for payment. The award fixing the liability cannot be set aside on the ground that the first respondent is entitled to exercise the lien. The question of exercising the lien would come into play only when the appellant makes a claim for payment pursuant to the award. It is always open to the first respondent to negative the prayer for payment, by exercising the lien under Clause 18(A) of the conditions of contract. That stage has not arisen so far.

17. The learned single Judge misconstrued clause 18(A) of the conditions of contract and set aside the very award fixing liability.

18. It is not in the province of the Courts to interfere with the award on the ground that the same was erroneous or on the ground that a different view is possible. The Court while exercising jurisdiction under Clause 34 is not acting as an Appellate Authority over the decision taken by the Arbitrator, on merits. The Court would be in a position to interfere in case there is a patent error or perversity in the award and the same is manifest.

The Law :-

19. The Supreme Court in Associate Builders vs. Delhi Development Authority, 2015(3) SCC 49, considered Section 34 of the Act in the light of the decided cases on the point and indicated the grounds available to the Court to set aside the award. The Hon'ble Supreme Court made it clear that an award could set aside if it is against public policy of India that is to say, if it is contrary to (a) fundamental policy of Indian Laws; (b) Interest of India; (c) injustice or morality or if it is patently illegal. It could also be challenged as provided under Sections 13(5) and 16(6) of the Arbitration and Conciliation Act. The Supreme Court said :-

It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

20. The Supreme Court in M/s.Navodaya Mass Entertainment Ltd. vs. M/s.J.M.Combines, 2014 (9) Scale 687, examined the questions relating to scope of interference by Courts in a proceeding under Section 34 of the Arbitration Act and observed thus:-

"In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail."

21. The learned single Judge set aside the award not on the ground that it was against public policy. The award was set aside only on the ground that the first respondent is entitled to exercise lien under Clause 18(A) of the Conditions of Contract. The fact that there is a provision to exercise the lien would not be a ground to set aside the award fixing the amount payable by the first respondent on account of the supply made by the appellants. To put it otherwise, award fixing liability cannot be set aside on the ground that there is a provision to withhold payment. We are therefore of the view that the learned single Judge erred in setting aside the awards passed by the Arbitrator, fixing the liability.

Interest:-

22. The next question is whether the Arbitrator was correct in fixing interest @ 18% p.a. from 30 September 1997.

23. The appellant claimed interest @ 33% p.a. The Arbitrator allowed interest @ 18% p.a. The appellant has not produced any material indicating that the contract provided for payment of interest at a particular rate. In case there was an agreement with respect to the payment of interest for delay in payment, the party to the contract is entitled to claim interest at such rate. However, in the present case, appellant has not produced any document indicating that the supplier is entitled to claim interest @ 18% p.a. The Arbitrator, without any basis, awarded exorbitant interest @ 18%. Since there was no agreement to pay interest @ 18%, the arbitrator was expected to pay only the Bank rate for delayed payment. We therefore, set aside the direction with regard to payment of interest @ 18% and substitute it by 9%. In short, the award amount would carry interest @ 9% from 13 September 1997.

24. We make it clear that this judgment confirming the award passed by the Arbitrator would not stand in the way of the first respondent from exercising the lien under clause 18A of the Conditions of Contract.

25. The intra court appeals are allowed to the extent indicated above. No costs.

Sd/-  
Assistant Registrar(CS II)

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Sub Assistant Registrar

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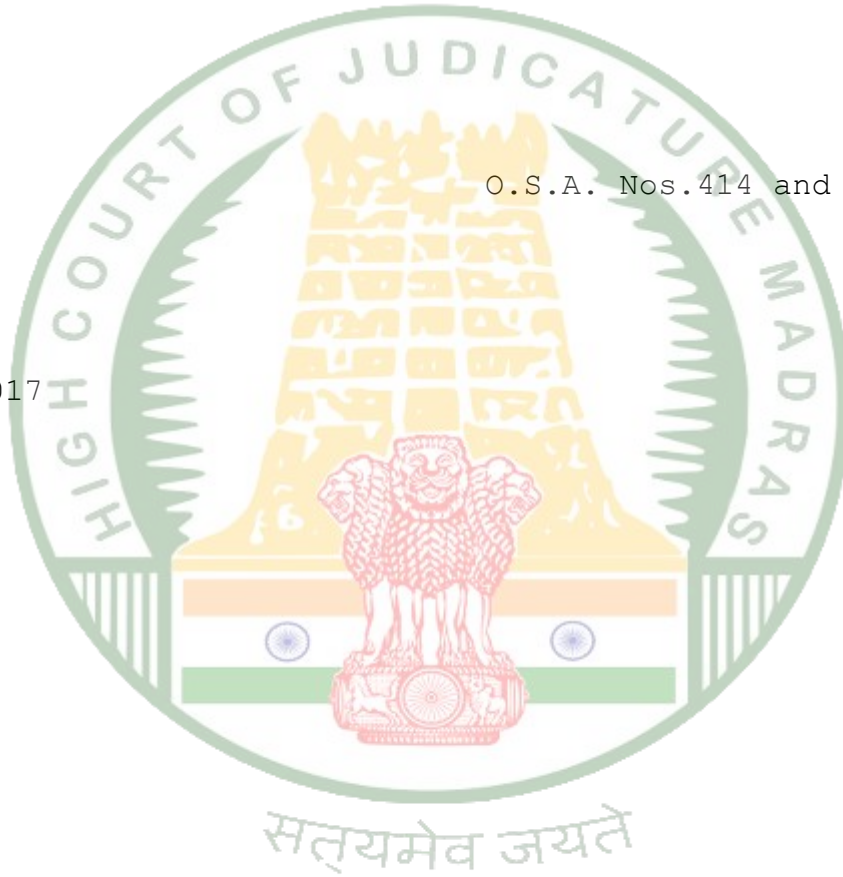
The Sub Assistant Registrar,  
Original Side,  
High Court, Madras-104.

+1cc to Mr.S.Kasirajan, Advocate Sr.5682  
+2cc to Mr.V.Venkatesan, Advocate Sr.5667  
+1cc to Mr.S.Kasirajan, Advocate Sr.5683

[19/04/2017]

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