

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition Nos.489 and 490 of 1999

Madras Port Trust rep. by its
Chief Engineer

.. Petitioner in
both the O.Ps

Vs.

1.M/s.Thirumagal Construction
rep. by its Partner T.Srinivasan

2.K.R.Gururajan,
Retired District Judge,
Arbitrator.

.. Respondents in
both the O.Ps

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 20.11.1998 and 19.11.1998
respectively.

For Petitioner : Mr.R.S.Jeevarathinam,
Sr. Counsel
for Mr.TD.K.Govindarajan
in both the O.Ps

For Respondents : Mr.V.Anantha Natarajan
in both the O.Ps

COMMON ORDER

Challenging the awards dated 20.11.1998 and 19.11.1998, the Madras Port Trust come up with these Original Petitions.

2.As the issue involved in both the original petitions is one and the same, they have been taken up together and disposed of by a common order.

3.Two contracts were awarded by the petitioner in favour of the first respondent for the construction of canteen and for the construction of Type IV Quarters. The first respondent did not complete the contract within the time stipulated. Thereafter, extension was granted. According to the petitioner, the work was not satisfactory and therefore, termination orders were passed followed by awarding of the contract in favour of the third parties. Alleging that termination orders were passed wrongly, the first respondent invoked the arbitration clause by making several claims. The petitioner made counter claims based upon the termination orders followed by the cost incurred in completion of the remaining work.

4.The learned Arbitrator went into all the claims. The issues raised on behalf of the petitioner as well as the first respondent were taken up. The learned Arbitrator accordingly recorded a finding that the termination orders cannot be valid. The case of the petitioner that it was a case of abandonment on the part of the first respondent was negated after finding that the first respondent did the work thereafter. Further more, the administrative acquiescence was also taken note of through the petitioner's orders of extension. Accordingly, awards have been passed in favour of the first respondent for a paltry sum of less than Rs.1 lakh in each case. Though the first respondent filed two original petitions challenging the awards they were accordingly withdrawn. Therefore, we are concerned with the original petitions filed by the petitioner alone.

5.Learned senior counsel appearing for the petitioner would submit that the orders of termination are valid in law. They have been passed in view of the failure of the first respondent in completing the work. The first respondent incurred loss in completing the remaining part of the work. Thus the awards passed require interference.

6.Learned counsel appearing for the first respondent would submit that the awards having been passed by considering the materials available on record would not require to invoke Section 34 of the Arbitration and Conciliation Act, 1996.

7.A perusal of the awards would show that all the issues have been considered at length. The learned Arbitrator rejected the contention of the petitioner that the first respondent has abandoned the contract. A specific finding has been given that the first respondent did some work even after the period of abandonment, as alleged by the petitioner. Further more, extensions were granted thereafter. Thus, the learned Arbitrator has rightly held that it was not open to the petitioner to contend that there was earlier abandonment. Once an extension was granted, the abandonment, if any, would have taken to have been waived, as rightly held by the learned Arbitrator. A further finding has been given that the petitioner did not send any further letter after Ex.B12 fixing some time for the completion of the contract. Taking into consideration the conduct of the parties as well as the terms of the agreement, it was accordingly held that time was not the essence.

8. Such finding given by the learned Arbitrator being a plausible one cannot be interfered with by invoking Section 34 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator has taken all the claims inclusive of both claims and counter claim and accordingly awarded a sum of Rs.97,704/- and 45,051/-. Thus, this Court does not find any reason to interfere with the well reasoned awards passed by the learned Arbitrator.

9. However, this Court finds some force in the submissions made by the learned senior counsel for the petitioner with respect to the interest awarded at 18% per annum. Normally, interest that is being levied by the Courts is only 12% per annum. In such view of the matter, the award of interest at 18% per annum is reduced to 12% per annum. In all other respects, the awards stand confirmed.

10. With the above modification, the original petitions stand dismissed. No costs.

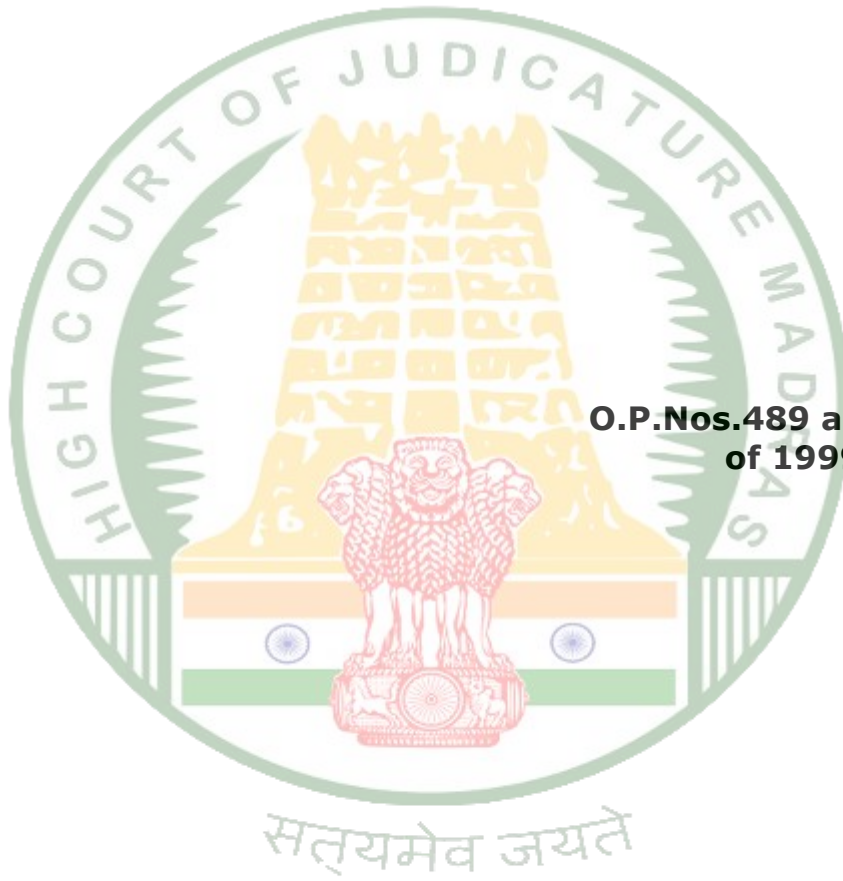
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M.M.SUNDRESH,J.

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