

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.187 of 2018

M/s.Madurantakam Co-op. Sugar
Mills Ltd., rep. by its
Managing Director,
Padalam - 603 309,
Kancheepuram District. ... Appellant

Vs

1.M/s.Karpagam Electricals
rep. by its Partner K.R.Mohan
2.The Arbitrator,
Justice K.Govindarajan (Retd.)
(Sole Arbitrator), Arbitral Tribunal,
No.8, Justice Ramanujam Road,
Malaviya Avenue, Shastri Nagar,
Chennai - 41. ... Respondents

Appeal preferred under Order XXXVI Rule 11 of O.S. Rules
r/w Clause 15 of Letters Patent against the judgment and decree
dated 15.09.2016 made in O.P.No.263 of 2009.

For Appellant ... Mr.M.S.Palanisamy

For Respondents.. Dr.S.R.Sundaram
No.1

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the order of dismissal dated
15.09.2016 made in O.P.No.263 of 2009.

2.The first respondent herein was the successful tenderer
for procuring electrical equipments. Accordingly, a contract was
issued in the year 1993. As per the contract, the first
respondent was supposed to supply necessary drawings and

information to erect and commission the electrical equipments. The work was completed on 29.06.1995 and in tune thereon, as safety certificate was obtained from the Chief Electrical Inspector.

3. Penalty was levied on the premise that the supply was made belatedly. Aggrieved over the same, the first respondent invoked the arbitration clause. The Tribunal gave a factual finding that the delay in supply is immaterial as the erection and commissioning was done within the time schedule. In other words, the Tribunal was pleased to hold that the appellant cannot be termed as the one prejudiced by the delay, if any, caused by the first respondent in its supply by adhering to the time schedule as the ultimate erection and commissioning was done within the time fixed. Challenging the same, the appellant filed the original petition before this Court. The learned single Judge was pleased to dismiss the original petition.

4. Learned counsel appearing for the appellant would submit that the award has been satisfied sans the interest levied. The interest has been levied at 9% per annum from July, 1995 to the date of payment or upto five months from the date of the award, whichever is earlier. The award amount was paid much thereafter and therefore, the second part, which is in the nature of default clause, by which the appellant was mandated to pay the interest at 12% per annum, has come into force, which requires to be interfered with. The interest that is being levied by the Courts is only 7.5% per annum. The appellant is having financial difficulties and it is having a serious crisis in meeting the day to day administrative expenses. Thus, the impugned order requires to be interfered with.

5. Learned counsel appearing for the first respondent would submit that having suffered the award, the consequence will have to follow. The Tribunal took into consideration the then prevailing interest rate, which was accordingly confirmed by the learned single Judge.

6. Awarding of interest is discretionary. However, there is an element of uniformity, which is required in awarding interest. The situation in which the appellant is placed is not in dispute. For quite some years, the appellant is facing financial crunch. Admittedly, the award amount has been paid. From the earlier rate of interest fixed by the Courts, a reduction is being adopted consistently thereafter. Thus, keeping in view the above, we deem it fit to modify Clause 3 of the award by reducing the rate of interest to 7.5% per annum from July, 1995 till the date of payment of the award amount by the appellant. The aforesaid amount will have to be paid within a period of eight weeks from the date of receipt of a copy of this order.

7.With the above modification in the rate of interest, the Original Side Appeal stands disposed of. No costs.

Post the matter on 10.09.2018 for reporting compliance.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

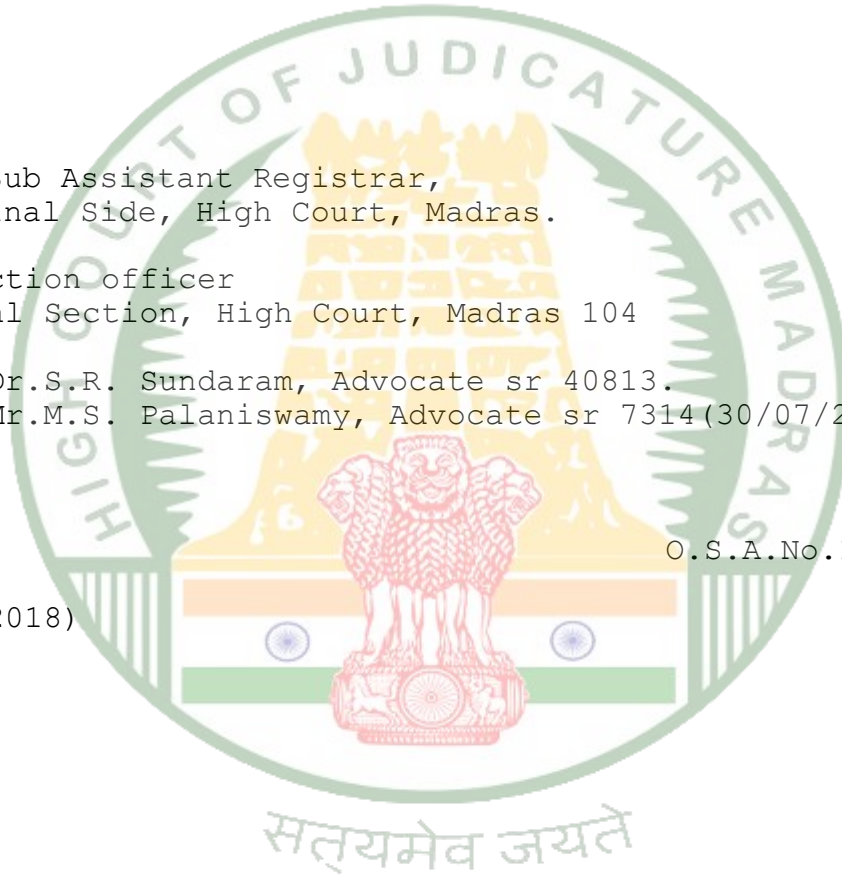
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To

1. The Sub Assistant Registrar,
Original Side, High Court, Madras.
 2. The Section officer
Judicial Section, High Court, Madras 104
- +1 CC to Dr.S.R. Sundaram, Advocate sr 40813.
+1 CC to Mr.M.S. Palaniswamy, Advocate sr 7314(30/07/2018)

O.S.A.No.187 of 2018

SP(24/07/2018)



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