

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

O.S.A.Nos.306 to 308 of 2018

Statco Infra Projects Pvt. Ltd.,
Formerly Known as Karismaa MEP Services Pvt. Ltd.,
Represented by Managing Director Mr.Manoj K.Sheth
No.4/4, Justice Ramanujam Street,
Ground Floor, Malavya Avenue,
Thiruvananthapuram, Chennai-600 041.

... Appellant in all Appeals/Petitioner in all Ops

Vs.

M/s.KGS Constructions Ltd.,
No.43, Besant Avenue,
Adyar, Chennai-600 020.

... Respondents in all Appeals/Respondent in all Ops

Common Prayer:- These Appeals are filed under Order XXXVI Rule 11 of O.S.Rules read with Clause 15 of the Letters Patent and Section 37 of the Arbitration and Conciliation Act, 1996 against the Order and Decree dated 10.11.2017 in O.P.Nos.140, 430 and 431 of 2017 respectively on the file of this Court.

Prayer in O.P.No.140/17 & 430/17, 431/17

Setting aside the award dated 09/11/16 and allow the claims petition filed by the petitioner before the Hon'ble Tribunal against the first respondent as well.

For Appellant : Mr.Nithyaesh Natraaj

COMMON JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.,]

The claimant/petitioner before the arbitration proceedings under Arbitration and Conciliation Act, 1996 (in short, 'Arbitration Act') is the appellant.

2. The claim made by the claimant against the respondent for a sum of Rs.95,32,418/- with interest at the rate of 18% p.a. was allowed in part by the learned Arbitrator, vide award dated 09.11.2016. The respondent made a counter claim and it was rejected. The claimant aggrieved by the rejection of the portion of the claim by an impugned award passed by the learned Arbitrator, filed O.P.Nos.140, 430 and 431 of 2017 and all the O.Ps. came to be dismissed by this Court by a common order dated 10.11.2017. Aggrieved by the said order of dismissal, the appellant is before this Court with the present appeals under Section 37 of the Arbitration and Conciliation Act.

3. The facts relating to these appeals have been narrated in detail and in essence, a common award was passed by the learned Arbitrator as well as common impugned order passed by the learned Single Judge. For the sake of brevity and unnecessary reiterating of the entire facts once again, except to narrate relevant facts for the purpose of disposing of these appeals, for the sake of convenience, this Court has taken the facts narrated by the learned Arbitrator in a common award dated 09.11.2016.

4. The claimant had entered into three contracts dated 23.05.2011, 31.05.2011 and 01.06.2011 with the respondent. The first contract was in respect of electrical works in their 'KGS-VRUDHI' residential development project at Chennai on 23.05.2011 for a consideration of Rs.1,74,28,247/- (inclusive of all taxes). The second contract was for carrying out electrical works in their 'KGS-GREEN' residential development project at Trivandrum on 31.05.2011 for a consideration of Rs.1,88,18,509/- (inclusive of all taxes). The third contract was in respect of Plumbing & Sanitary works in their 'KGS-GREEN' residential development project at Trivandrum on 01.06.2011 for a consideration of Rs.63,18,536/- (inclusive of all taxes). Therefore, in total two contracts were entered into by the claimant with the respondent in the KGS-GREEN Site and one contract was entered into at the KGS-VRUDHI site.

5. It is the case of the claimant that, considering the very slow progress made in the said process, which in turn started eating up their profits, they took a decision to relieve themselves from the said projects during January 2012. In respect of the work executed, periodically bills raised were submitted to the respondent and they have also periodically certified the work done by them and there has never been any dispute in the way or manner in which the work has been done by the claimant.

6. It is the further case of the claimant in the above said claim petition that despite certification of the bills raised, they have not certified the same and therefore, in respect of

the bills, which were certified by the respondent, the claimant is entitled to Rs.95,32,418/- with an interest at the rate of 18% p.a.

7. The respondent, on entering appearance filed their statement of defence raising the plea under Sections 297 and 299 of the Companies Act, by way of preliminary objection and on merits of the claim projected by the claimant. The claimant specifically denied the certification done by respondent, for the reason that the claimant is entitled to the amount paid under the contract as the respondent had entered under Sections 297 and 299 of the Companies Act. The respondent made a claim of Rs.1,34,78,696/- from the claimant with interest at the rate of 18% p.a, and the claimant has also filed a rejoinder to the defence statement, reiterating the steps taken by them in the claim petition.

8. During the course of enquiry, one Mr.Manoj K.Sheth has filed his proof affidavit on behalf of the claimant and examined as CW1 and marked 26 documents as claimant's exhibits in respect of the claims. On behalf of the respondent, their Legal Officer Bhagavathi Perumal was examined as RW1 and in respect of their counter claim, six documents were marked as respondent's Exhibits. The learned Arbitrator, on consideration of the averments made in the claim petition and reply statement, had framed the following issues:

1. Whether the claimant has complied with its obligations under the agreement between the parties?
2. Whether the claimant is entitled to receive payment of any sums under the agreement between the parties?
3. Whether the respondent is entitled to the counter claim for payment of a sum of Rs.1,34,78,696/-?
4. Whether the parties are entitled to the reliefs as prayed for?
5. Whether the parties are entitled to exemplary costs of the arbitration?
6. To what other reliefs are the parties entitled to?

9. The learned Judge after considering the primary objection went on to adjudicate the matter on merits, and found that the respondent has obviously accepted the withdrawal of the claimant from the project and went on to adjudicate the quantum of amount due payable by the respondent to the claimant. The learned Arbitrator found that in respect of the bills Exs.C2, C9 and C14 found that it cannot be held that those certification has not been done and in respect of other claims found that the claimant is entitled to the amount and reached a conclusion that claimant's obligation under the contract has been complied with

as per the conditions of the contract, but he insisted that the project is accepted by the respondent and the claimant is entitled to the three amounts as mentioned above. Accordingly, the claimant is entitled to the above as per award dated 09.11.2016, with a claim of Rs.23,83,595.33 in respect of a first contract together with interest at the rate of 18% per annum from 16.03.2012 and with regard to second contract, the claimant is entitled to Rs.2,72,658.27 with interest at the rate of 18% p.a., from 08.02.2012 and a sum of Rs.4,26,395/- with interest at 18% p.a., from 08.02.2012 with regard to third contract and also awarded a costs of Rs.1,00,000/-. The learned Arbitrator further found the counter claim made by the respondent is only retaliation for the claim raised by the claimant.

10. The claimant aggrieved by the award of non consideration of the balance amount, and he has filed ROP in O.P.Nos.140, 430 and 431 of 2017 by invoking Section 34 of the Arbitration Act, 1996 and pending disposal of the same, also obtained interim orders under Section 9 of the Arbitration Act, and for furnishing security to the extent of the claim amounts, the claimants preferred Applications No.1967-1969 of 2014 before this Court and the same was allowed on 27.03.2015.

11. When the O.Ps. are taken up for final hearing, the respondent had contested the applications filed under Section 9 of the Arbitration Act, 1996.

12. The learned Judge, after taking into consideration the submissions made by the learned counsel appearing for the petitioner and materials placed and further taking into consideration the minimum scope of interference, had concluded the reasons arrived and also the conclusion arrived by the learned Judge is based on the examination and after hearing the parties and therefore, no case is made out to interfere with the award and therefore dismissed all the original petitions vide order dated 10.11.2017 and challenging the legality of the said order, the present appeals have been filed by the claimant.

13. The learned counsel for the appellant has invited the attention of the Court to the claim statement, defence statement, rejoinder and exhibits marked as well as oral evidence of the witnesses examined on behalf of the parties and would submit that though the signature on behalf of the respondent had signed Exs.C2, C9 and C14 bills, the endorsement made across the amount payable, the learned Arbitrator misappreciated all the evidence, had reached conclusion that no proper certification has been done and unjustly rejected the part of the claim to the claimant. It is the further submission of the learned counsel for the appellant/claimant that non-consideration of the evidence available on record also amounts

to one of the grounds for interference and therefore, would plea for interference.

14. The learned counsel for the Arbitrator relied upon the Full Bench judgment of Kerala High Court in the cases of Alex M.George Vs. Special Deputy Collector, Thrissur and others reported in 2018 (4) CTC 353.

15. This Court heard the submissions made by the learned counsel for the appellant and perused the materials placed before it in the form of typed set of documents.

16. In the claim statement, it is the specific plea of the claimant that in respect of the above said exhibits, certification has been done by means of signatures on behalf of the respondent. In the absence of such certification, the learned Arbitrator committed a grave and serious error in rendering a finding that the Exhibits / Bills have not been properly certified and drawn the attention of the Court and also invited the proof affidavit in view of chief examination filed on behalf of the claimant as well as the respondent as well as cross examination.

17. A perusal of the materials and agreements would indicate that the mode of certification has not been specifically communicated as per clause 2.0(b) of the terms and conditions of the agreement. It is stated that R.A. Bills will be submitted for payment once in 15 days and clause-6.0 deals with payment terms and it would state that there is an unqualified agreement to submit bills with all necessary documents, the same shall be done within 15 days from the date of certification of the bill. Thus clause-6.0 terms and conditions would indicate that the claimant has to submit the bill stage-wise along with other documents and detailed measurements and the checking shall be done by the Engineer and payment would be released from the date of certification of the Bills. The claim made neither in the claim petition nor in the chief examination, do not specifically indicate as to the mode of certification and the plea with regard to certification is specifically denied by the respondent in their defence statement.

18. One Mr.Manoj K.Sheth examined himself as CW1 on behalf of the appellant/claimant and question No.16 pertains to certification and it was on the suggestion denied by him.

19. On behalf of the respondent, the legal officer was examined as RW1 and on perusal of cross examination would indicate that no specific question has been made as to the mode of certification, though the claimant would seek claim in respect of three exhibits and some correction made on the side of an Engineer would amounts to certification and their

attention was not invited to those documents and no specific questions also put to as to the mode of certification.

20. The learned Arbitrator had elaborately gone into the said issue and reached the conclusion that in respect of the above said three exhibits, no certification has been done.

21. The learned Arbitrator also in paragraphs 10.12 recorded as 'it is true that the claimant has done his work to some extent which is seen from the remarks of the respondent's representative. But the claimant has not valued the work done as accepted by the respondent even as an alternative plea. So I cannot grant any amount on this head. What is definitely due to the claimant is the value of the materials supplied and handed over to the respondent at the site'.

22. It has to be remembered at this juncture, the scope and object of the Arbitration Act is the expeditious disposal of the claim with least judicial interference.

23. Assuming for the sake of arguments this Court is entitled to re appreciate the evidence like that of the regular Civil Court do, it may not be possible to do so, for the reason that unless the appreciation of the evidence by the learned Arbitrator and the findings reached based on no evidence, which would result in perversity, Award cannot be interfered with. This Court taking into consideration the limited jurisdiction vested with it under Section 37 of the Arbitration Act, cannot re-appreciate the materials placed before the learned Arbitrator and reach altogether to a different conclusion, which is also impermissible under law.

24. In the considered opinion of this Court, the learned Single Judge after proper appreciation of the materials placed, rightly reached the conclusion. This Court after perusing the entire materials, considered there is no error apparent or infirmity arised by the learned Single Judge for dismissing the O.Ps. and no merit in the appeals. Therefore, these appeals are dismissed and common order, dated 10.11.2017 in O.P.Nos.140, 430 and 431 of 2017 are confirmed at the admission stage itself.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssn

To:

1.The Sub Assistant Registrar,
Original Side, High Court, Madras.

O.S.A.Nos.306 to 308 of 2018

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