

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.841 of 2018

and C.M.P.No.7359 of 2018

M/s.S.K.Constructions

rep.by its Partner, S.Kulandaivel

No.7, Nehru Street,

U.P.K.Valasu, Modakurichi,

Erode District.

... Appellant

-vs-

1.The Principal District Judge,

Villupuram District,

Villupuram.

2.The Superintending Engineer,

Public Works Department - Buildings

(Construction & Maintenance),

Vellore Circle, Vellore.

3.The Executive Engineer,

Public Works Department - Buildings

(Construction & Maintenance),

Villupuram.

... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.26481 of 2017 dated 07.03.2018.

Writ Petition filed under Article 226 of the constitution of India to issue a writ of Mandamus to directing the respondents 2 and 3 to forthwith pay the sum of Rs.1 43 37 800/- along with price escalation cost due to the petitioner pursuant to the final bill amount in respect of the work construction of combined court buildings at Tindivanam pursuant to the agreement entered into between the petitioner and the 2nd respondent on 8.02.2013.

For Appellant :: Mr.AR.L.Sundaresan, Sr.Counsel
for Ms.AL.Ganthimathi

For Respondents:: Mrs.Narmada Sampath,
Addl.Advocate General
assisted by
Mr.P.Sivashanmugasundaram,
Special Government Pleader
for R2 and R3

JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.)

The appellant filed a writ petition before this Court in W.P.No.26481 of 2017 praying for a Writ of Mandamus directing the respondents 2 and 3 to forthwith pay a sum of Rs.1,43,37,800/- due to the appellant herein to the final bill amount in respect of the construction work of combined Court Buildings at Tindivanam, pursuant to the agreement entered into between the appellant herein and the second respondent, on 08.02.2013. The respondents 2 and 3 filed a counter affidavit in the writ petition admitting their liability to the tune of only Rs.54.29 lakhs. The writ petition was disposed of on 07.03.2018 granting liberty to the appellant to agitate the matter by invoking Arbitration Proceedings.

2.Challenging the order dated 07.03.2018 in the writ petition, the appellant is before this Court with this writ appeal.

3.The learned senior counsel appearing for the appellant has submitted that even though there is an Arbitration Clause in the agreement entered into between the appellant and the second respondent herein, the same can be invoked only for disputes or claims which are not more than Rs.50,000/-. When that being the position, the learned single Judge has erred in passing the impugned order with a direction to agitate the matter by invoking Arbitration Proceedings, according to the learned senior counsel appearing for the appellant. However, he submitted that by consent of both parties, the matter may be referred to an Arbitrator.

4.The learned Addl.Advocate General appearing for the respondents 2 and 3 submitted that the quality of work in the construction of Court Premises is very poor and there is sub-standard quality of work. She further submitted that the amount due to the appellant is only about Rs.43 lakhs and not Rs.1.43 Crores as stated by the learned senior counsel for the appellant.

5.Heard the learned counsel on either side and perused the materials available on record.

6.When this matter came up on 23.04.2018, we felt that a detailed survey needs to be conducted by an Engineer. Hence, we directed the Registry to address the Director of IIT to appoint an Executive Engineer to conduct a spot inspection and submit a report to this Court with regard to the construction, especially standard / alleged sub-standard of the quality of construction

and delay, if any, in completion of the work. Accordingly, inspection has been conducted and a report has been filed before this Court, in which many deficiencies are noted.

7. According to the learned senior counsel for the appellant, the standard of construction is not poor and that the amount due to the appellant is about Rs.1.43 Crores, whereas according to the learned Addl. Advocate General, the amount due to the appellant is about Rs.43 Lakhs only. This point has to be ascertained properly. The quality of construction work also has to be properly ascertained. It also appears that certain documents have not been furnished by the Contractor to ascertain the quality of construction.

8. In these circumstances, to resolve the dispute between the appellant and the respondents 2 and 3, we deem it appropriate to refer the matter to an Arbitrator, for which both the parties have agreed.

9. Accordingly, Hon'ble Mr. Justice K.P. Sivasubramanian, retired Judge of this Court, is appointed as Arbitrator, who shall adjudicate the issue involved herein. The fees with regard to conducting the arbitration proceedings shall be fixed by the Arbitrator himself, after consultation with the parties. All necessary documents shall be produced before the Arbitrator for adjudication of the issue. Both the parties shall put forth all their contentions before the Arbitrator. Copies of the report of the Executive Engineer (Civil), IIT Madras, shall be supplied to both the parties.

10. The writ appeal is disposed of accordingly. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

KM

To

1. The Principal District Judge,
Villupuram District,
Villupuram.

2.The Superintending Engineer,
Public Works Department - Buildings
(Construction & Maintenance),
Vellore Circle, Vellore.

3.The Executive Engineer,
Public Works Department - Buildings
(Construction & Maintenance),
Villupuram.

+lcc to Mr.A.L.Gandhimathi, Advocate SR.No.47753
+lcc to Government Pleader SR.No.48107

W.A.No.841 of 2018
and
C.M.P.No.7359 of 2018

KS (CO)
GN (27/08/2018)



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