

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

O.P. NO. 143 OF 2012

1. The Union of India
rep. By the General Manager
Southern Railway
Chennai 600 003.
2. The Chief Engineer (Construction)
Office of the Chief Administrative Officer
Southern Railway, Egmore
Chennai 600 008.
3. The Deputy Chief Engineer
(Gauge Conversion)
Southern Railway
Vridhachalam @ Trichy
State Bank Road, Trichy – 1. .. Petitioners

- Vs -

1. M/s.Unique Builders
rep. By its Proprietor S.Nallasamy
No.1369, 5th Street
Golden Colony, Mogappair, Chennai 600 050.
2. Hon'ble Mr. Justice
Malai Subramaniam (Retd.)
(Sole Arbitrator)
Thendral Colony, Anna Nagar
Chennai 600 040. .. Respondents

Original Petition filed to set aside the portion of the award of the 2nd

respondent dated 31.8.2009 under claim No.10, pertaining to disputes arising out of the agreement dated 26.10.2006 bearing No.57/Dr.CE/GC/VRI/2006 entered into between the petitioners, awarding pendente-lite interest for the period from 4.1.2008 to 31.8.2009 in the sum of Rs.5,07,073/=.

For Petitioners : Mr. V.G.Suresh Kumar
For Respondents : Mr. Amalraj S.Penikilapatti for R-1

ORDER

The 1st respondent was awarded work vide letter of acceptance dated 18.9.2006. It was followed by an agreement dated 26.10.2006. The currency of the work was extended subsequently. After completion of the work, the respondent made a claim, which is inclusive of repayment of security deposit, damages and interest. On dispute, the matter was referred to arbitration and, the learned Arbitrator, awarded payment of money with interest. The petitioners have complied with the award amount, but have laid a challenge only insofar as interest is concerned.

2. Placing reliance upon clauses 16.2 and 64.5 of the general conditions of contract, which has been taken note of by this Court in ***O.P. Nos.188/2010 and 289/2014 dated 2.2.2018 (Dy. Chief Engineer (Constr.) Southern Railway, Podanur – Vs – M/s.Vishal Constructions & Anr.)***, learned counsel appearing for the petitioners submit that the petition will have to be allowed.

3. Learned counsel appearing for the 1st respondent submits that plea having not taken before the Arbitrator, it is not open to the petitioners to contend to the contrary. Hence, the petition will have to be dismissed.

4. On the scope and applicability of the general conditions of contract and its binding nature on the parties to the contract, this Court, in the judgment aforesaid, has dealt with in extenso. When once clauses 16.2 and 64.5 prohibit the entitlement of a claimant to interest and thus bars the Arbitrator to award interest, the same cannot be sustained in the eye of law. There is no need for raising the plea by way of defence since the claim itself is not maintainable in law. Otherwise, it will amount to rewriting the terms of the contract, which is binding on the parties. In such view of the matter, this Court is of the view that the petition deserves to be allowed in view of the express provisions contained in clauses 16.2 and 64.5 of the general conditions of contract. Accordingly, this petition is allowed. No costs.

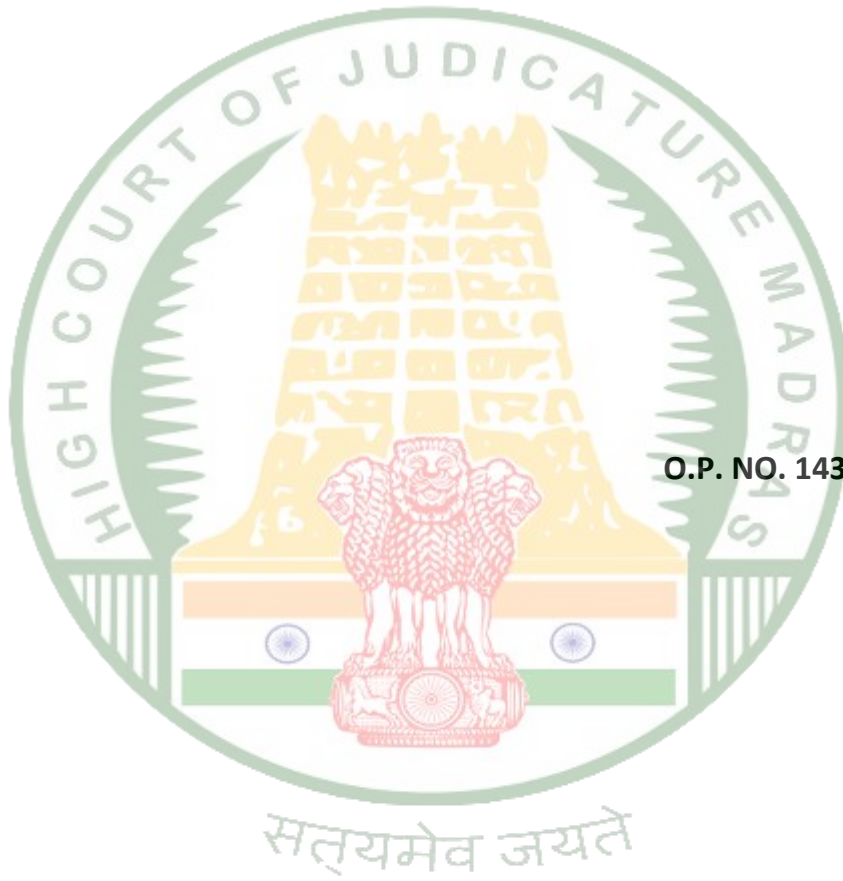
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M.M.SUNDRESH, J.

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