

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM

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

Original Petition No.417 of 2010

M/s.Indian Oil Corporation Ltd.,
rep. by its Chief Plant Manager
P.Srinivasan

.. Petitioner

Vs.

1.System Security Services
rep. by its Proprietor V.V.P.Nair

2.K.Natarajan,
Sole Arbitrator,
No.6/10, II Trust Cross Street,
Mandavelipakkam, Chennai - 28.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 05.01.2010.

For Petitioner : Mr.P.S.Sivasubramaniam

For Respondents : Mr.Ashok Menon for R1

ORDER

The first respondent was issued with work order on 07.09.2007 for housekeeping and haulage work. An agreement was entered into subsequently on 11.09.2007. The work could not be completed as agreed upon. Claiming the pending bills, the first respondent made a claim. After issuance of the contract, the petitioner made a counter claim for the expenses incurred in engaging a third party.

2.Though the first respondent made a claim for Rs.39,75,000/-, the learned Arbitrator was pleased to award only a sum of Rs.8,79,230/-, by placing reliance upon Ex.R19. Similarly, counter claim made by the petitioner was rejected for want of evidence. Challenging the same, the present original petition has been filed.

3.Learned counsel appearing for the petitioner would submit that Ex.R19 clearly shows that a sum of Rs.16 lakhs has been incurred for engaging the third party. After giving a finding that the termination is valid, the learned Arbitrator has erred in passing the award in favour of the first respondent.

4.Learned counsel appearing for the first respondent would submit that since the award has been passed on merits by taking into consideration each of the claims, no interference is required.

5.Admittedly, the first respondent sought for a claim for a sum of Rs.39,75,000/-, which is inclusive of the bank guarantee given by it. The claim has been made for pending bills, overtime wages, damages and bank guarantee. The learned Arbitrator took into consideration Ex.R19 for passing the award. Ex.R19 having been filed by the petitioner itself, the same cannot be questioned by it. In fact, it is not at all the case of the petitioner that Ex.R19 is not correct. In such view of the matter, the finding recorded by the learned Arbitrator cannot be found fault with.

6.The termination by itself will not dis-entitle the first respondent from making the claim for the work done. Similarly, for the counter claim, there was absolutely no material except a recording said to have been made in Ex.R19. When the petitioner makes a counter claim, it becomes a claimant. Therefore, it is for the petitioner to substantiate the claim. A factual finding has been given by the learned Arbitrator

that there is nothing to indicate that the petitioner did employ another contractor. It did not even demand till counter claim is made that they have incurred loss by engaging a fresh contractor. There was absolutely no evidence produced in support of the recording made under Ex.R19. The factum of calling a fresh tender and appointment of the contractor among other things have not been produced before the learned Arbitrator. Therefore, the damages having not been quantified and proved, the learned Arbitrator has rightly rejected the claim.

7.In such view of the matter, the conclusion of the learned Arbitrator, being on facts, need not be interfered with. Accordingly, the original petition stands dismissed. No costs.

09.01.2018

Index:Yes/No

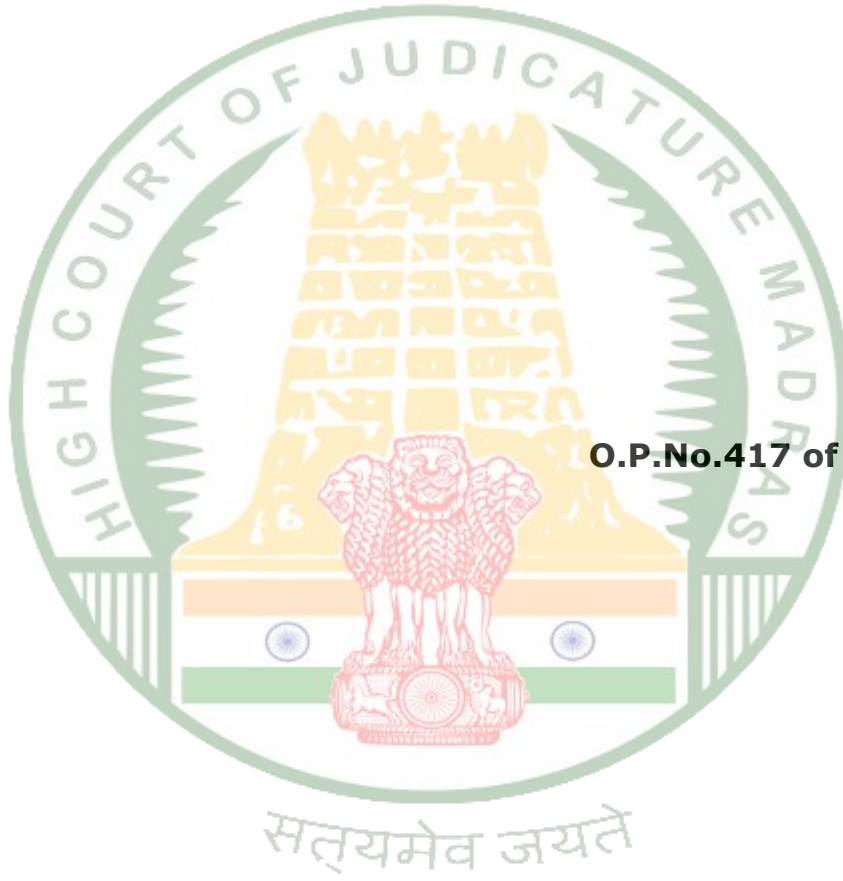
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M.M.SUNDRESH,J.

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O.P.No.417 of 2010

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