



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CMA(MD).No. 244 of 2016

Wilson FDO,

: Appellant / petitioner

Vs.

1. The Director,
Central Marine Fisheries Research Institute,
Post Box. No. 1603, Ernakulam North Post,
Cochin, Kerala.

2.M.S.Madan

: Respondents 1&2/ Respondents 1&2

3.The Traffic Manager,
Thoothukudi Port Trust,
Thoothukudi.

: 3rd Respondent/Garnishee

Prayer: This Civil Miscellaneous Appeals are filed under Section 34 of Arbitration and Conciliation Act, 1996 and Order XLIII Rule 1 of CPC against the fair and decreetal order dated, 17.12.2014 in AR.O.P.No.253 of 2013 on the file of learned Principal District Judge, Thoothukudi.

For Appellant	:	Mr.A.L. Kannan
For R1	:	No appearance
For 3	:	Mr. A. Arivu Chandran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated, 17.12.2014 made in AR.O.P.No.253 of 2013, on the file of Principal District Court, Thoothukudi.

2. The appellant is the petitioner in AR.O.P.No.253 of 2013, on the file of learned Principal District Judge, Thoothukudi. The appellant filed said petition under Section 9 of Arbitration and Conciliation Act, 1996, for issuing a direction to the respondents to pay a sum of Rs.5,00,000/- and to appoint an Advocate Commissioner to take custody of Boat 43, Boat Cadalmin IV berthed in the Thoothukudi Old Port and hand over the same to the third respondent herein and to appoint an Advocate Commissioner along with qualified certified Marine Surveyor to visit the Old Port,



Tuticorin, where the boat Cadalmin is being berthed and to note down the works carried out by the petitioner specified in the schedule to the arbitration O.P.

3. According to the appellant, the respondents 1 and 2 called for tender for repairing the Boat Cadalmin IV berthed in the Thoothukudi Old Port belonging to the first respondent. The appellant was successful tenderer and the agreement was entered on 8.12.2010 mentioning the work to be done by the appellant. During the period 2011 when the appellant was doing repair work, the first respondent along with second respondent instructed the appellant to do additional work and informed the appellant that the amounts will be paid to him for the additional work done by him as per their instructions. The appellant done the work as per the agreements as well as additional work as instructed by the first respondent. The appellant submitted a bill, for a sum of Rs.6,18,804/- on 30.03.2012. The respondents 1 and 2 did not pay the amounts and did not appoint arbitrator as per the agreement. The appellant sent notice through Advocate on 18.03.2013 and there was no response from the respondents 1 and 2. The respondents 1 and 2 were taking steps to use the Boat. If the boat is used continuously in high-seas the Boat will highly deteriorate, will become scrap and the additional work which the appellant has done cannot be found out. Hence, the appellant has filed the AR.O.P.No.253 of 2013 for the relief stated above.

4. The respondents 1 and 2 filed counter statement and denied having instructed the appellant to do additional work and contended that the appellant has not made a claim for additional work, when he submitted the details claiming amount for the work done as per the agreement, dated 08.12.2010. Final payment was made on 31.03.2011. After that, the appellant has written a letter on 30.03.2012, claiming a sum of Rs.6,16,804/- for additional work carried on by him in the Boat. There is no provision to carry out the additional work without written communication from the respondents 1 and 2. The respondents 1 and 2 did not instruct the appellant to carry out the additional work and he is not authorised to do so. The petition filed by the appellant is not maintainable under Section 9 of Arbitration and Conciliation Act, 1996.

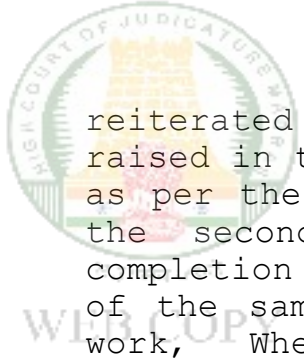
5. The third respondent filed counter and contended that that the third respondent is not necessary party and the third respondent will abide any order passed by this Court.

6. The learned Principal District Judge, Tuticorin, considering the pleadings and arguments dismissed the Arbitration OP filed by the appellant.

7. Against the said order, the appellant has filed the present appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

8. The learned counsel appearing for the appellant



reiterated the averments made in the arbitration OP in the grounds raised in the appeal and contended that the additional work was done as per the instructions of the first respondent in the presence of the second respondent. The additional work was done after completion of work as per the agreement, dated 08.12.2010. In view of the same, the appellant could not submit bills for additional work, When he submitted the three bills earlier as and when he completed the work as per the agreement. After completing the work, the appellant started the additional work as instructed by the first respondent. On completion of the said work, he submitted the Bills for the additional work done by him. The respondents 1 and 2 are denying the additional work done by the appellant and unless the Advocate Commissioner is appointed to take charge of the Boat and the same is inspected by the qualified Marine Surveyor along with Advocate Commissioner to find out the work done by the appellant, the appellant will not be in a position to prove the additional work done by him.

9. The learned counsel appearing for third respondent submitted that the third respondent will abide any order passed by this Court.

10. Though the names of the respondents 1 and 3 are printed in the cause list, there is no representation on behalf of the respondents 1 and 3.

11. I have heard the learned counsel appearing for the appellant.

12. The Arbitration OP filed by the appellant for appointment of an Advocate Commissioner to inspect the Boat with the help of qualified Marine Surveyor and assess the extra work done by the appellant and for other reliefs. The said OP was dismissed on the ground that the appellant could not do additional work without written instructions from the first respondent and he has raised bills claiming amounts for additional work belatedly i.e after a period of one year from the date of completion of work and he did not make such claim when he submitted three bills for the work done by him as per the agreement. The learned Judge has dismissed the OP without properly appreciating the claim of the appellant and the nature of relief sought for in the Arbitration OP. The appellant is seeking to record additional work done by him by a qualified Marine Surveyor to be inspected along with Advocate Commissioner. Whether the appellant is entitled to the claim or not it is the subject matter of arbitration proceedings to be initiated by the appellant or respondents 1 and 2. The present Arbitration OP is filed for interim relief as per Section 9 of Arbitration and Conciliation Act, the said petition is maintainable.

13. The learned counsel appearing for the appellant contended that the Boat is still lying in dry dock on Tuticorin Old Port Trust for a period of 5 years and the same is not taken to High-seas by the first respondent. The said contention is not

<https://hcservices.ecourts.gov.in/hcservices/>



disputed.

14. In view of the above reason, the arbitration petition is remanded to the learned Principal District Judge, Tuticorin, directing the learned Judge to appoint an Advocate Commissioner to inspect the Boat along with qualified Marine Surveyor and file a report, within a period of two weeks from the date of receipt of this Judgment with a direction to the Advocate Commissioner to complete the inspection with the help of qualified Marine Surveyor, within a period of two weeks thereafter. On receipt of the report, the learned Judge is directed to consider the materials on record, decide the Arbitration OP on merits and pass orders in accordance with law, within a period of two months thereafter.

15. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

trp

To

The learned Principal District Judge, Thoothukudi.

+1cc to Mr.A.Arivu Chandran, Advocate in SR No.82073

CMA(MD).No. 244 of 2016

NM/RSK/SAR II/08.11.18/4P/3C.