

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 18.03.2019

ORDER PRONOUNCED ON : 04.04.2019

A.Nos.520 & 521 of 2015 in E.P.No.44 of 2014andA.Nos.522 & 523 of 2015 in E.P.No.43 of 2014**R.SUBRAMANIAN.J.,**

1. These applications have been filed challenging the order of the learned Master dated 11.12.2014, in and by which, the learned Master overruled the objections of the judgment debtors for execution of the award and directed issuance of warrant of attachment, on the failure of the judgment debtors to pay the award amounts as per the awards passed on 10.10.2009.

2. The proceedings before the learned Master arose in execution of the awards passed by the sole Arbitrator in Arbitration Case Nos.2 and 3 of 2008-2009. The respondents viz., decree holders had entered into contracts for doing certain Government works viz., formation of Hosur Inner Ring Road including construction of minor bridge and pipe culverts. A dispute arose between the parties to the said contract and the contractors sought for a reference of the dispute for Arbitration in terms of the Arbitration Agreement.

3. Applications were moved before the Hon'ble The Chief Justice under Section 11(4) of the Arbitration and Conciliation Act, 1996 in OP.Nos.58 of 2003 etc. By an order dated 03.02.2006, the Hon'ble The Chief Justice dismissed the applications concluding that the dispute is not arbitrable. This order of the Hon'ble The Chief Justice made under Section 11(4) of the Arbitration and Conciliation Act, 1996 was challenged by the petitioners in OP.Nos.57 and 58 of 2003 viz., the contractors in SLP Civil Nos.10479 of 2006 and 13080 of 2006. Upon hearing the parties, the Hon'ble Supreme Court by its order dated 21.07.2008 appointed Hon'ble Mr.Justice E.Padmanaban a former Judge of this Court as the sole Arbitrator. The order of the Hon'ble Supreme Court reads as follows:-

"Heard the learned counsel for the parties.

Having regard to the facts and circumstances of the case, we appoint Justice E.Padmanaban, retired Judge of the Madras High Court as an Arbitrator to go into all the questions and resolve the dispute between the parties. The terms and conditions of remuneration shall be settled by the Arbitrator concerned.

All the questions of law and facts are left open to be decided by the Arbitrator.

The Special Leave Petitions are disposed of.”

4. Pursuant to the said appointment, the Hon'ble Arbitrator entered upon reference and passed an award on 10.10.2009 which was subsequently amended on 06.12.2009. As per the said award, the Arbitrator had directed the applicants to pay certain amounts to the respondents/ contractors. Challenging the said awards, the applicants herein filed Original Petitions in OP.Nos.169 and 170 of 2010 under Section 34 of the Arbitration and Conciliation Act, 1996.

5. The primary contention of the applicants in the said Original Petition filed under Section 34 was that the Hon'ble Arbitrator had not decided the question of jurisdiction raised under Section 16 of the Arbitration Act. The said Original Petitions were disposed of by this Court by order dated 28.03.2011. This Court found that the Hon'ble Arbitrator should have disposed of the preliminary objections with regard to jurisdiction raised by the applicants herein while passing the award. Therefore, the awards were remitted back to the Hon'ble Arbitrator to take a decision on the applications moved under

Section 16(2) of the Arbitration and Conciliation Act by passing a speaking order on merits. Paragraph 10 of the said order dated 28th March 2011 reads as follows:-

“10. For the reasons stated, the impugned award is remitted back to the learned Arbitrator, to take a decision on an application moved under Sec.16(2) of the Arbitration & Conciliation Act by passing a speaking order on merit. No costs. ”

6. Pursuant to the said remand, the Hon'ble Arbitrator took up the matter again and considered the affidavits filed by the applicants herein before him on 12.03.2009 objecting to the jurisdiction of the Hon'ble Arbitrator on the ground that the dispute is not amenable to arbitration, inasmuch, as the value of the claim is above Rs.2 Lakhs.

7. The primary contention of the State/ applicants before the Hon'ble Arbitrator was that in view of the fact that the value of the claim is above Rs.2 Lakhs and in view of G.O.Ms.No.1545 dated 26.07.1990, the dispute cannot be and should not have been referred to arbitration. The reliance was also placed by the learned Special Government Pleader, before the Hon'ble Arbitrator on the orders of the Hon'ble The Chief Justice dated 03.02.2006.

8. Claiming that the order dated 03.02.2006 was not set aside by the Hon'ble Supreme Court when it disposed of the Special Leave Petitions referred to supra, it was contended before the Hon'ble Arbitrator by the applicants herein that there was prohibition against the very reference of the dispute for arbitration. The Hon'ble Arbitrator passed a detailed order rejecting the plea regarding the legality of the reference to the Hon'ble Arbitrator. The Hon'ble Arbitrator had considered the fact that there was inordinate delay on the part of the applicants in raising the issue regarding jurisdiction under Section 16(2) of the Arbitration and Conciliation Act, 1996.

9. The Hon'ble Arbitrator also took note of the fact that the affidavits dated 12.03.2009 was filed after issuance of the show cause notice under Section 25(b) of the Arbitration and Conciliation Act, 1996. Having considered the question of jurisdiction, the Hon'ble Arbitrator by his order dated 10.06.2013 rejected the jurisdictional objection raised by the applicants herein before him.

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10. The award was put to execution in E.P.Nos.43 and 44 of 2014. The learned Master directed attachment of the properties which are described in

the schedule, in the event the judgment debtors/ applicants herein fail to pay the award amount within the period stipulated by him. While things stood thus, the applicants herein filed Original Petitions in OP.Nos.110 and 111 of 2018 under Section 34 of the Arbitration and Conciliation Act seeking to set aside the awards dated 10.10.2009 which was subsequently, amended on 06.12.2009 and 10.06.2013. The Original Petitions came to be dismissed by this Court by order dated 25.04.2018.

11. It is seen from the order of this Court dated 25.04.2018 that the Original petitions challenging the awards were filed on 05.11.2014. It is thereafter the learned Master passed the order on 11.12.2014. These applications have been filed parallelly in the year 2015 questioning the orders of the learned Master directing attachment.

12. I have heard Mr.Sricharan Rangarajan, learned Special Government Pleader for the applicants and Mr.S.Udayakumar, learned counsel appearing for the respondents/ Government.

13. It is the primary contention of Mr.Sricharan Rangarajan, learned Special Government Pleader that the Hon'ble Arbitrator had no jurisdiction to enter upon reference, and therefore, the very award is nullity and hence inexecutable. The learned Special Government Pleader would draw my attention to the conditions of the contract which have been extracted by the Hon'ble The Chief Justice in the order dated 03.02.2006 and also the contents of G.O.Ms.No.1545 dated 26.07.1990 to contend that the value of the claim being over Rs.2 Lakhs, the very reference to the Hon'ble Arbitrator was not possible. The relevant portion of the G.O.Ms.No.1545 dated 26.07.1990 reads as follows:-

“(i) The existing system of referring the dispute between the contractor and the Department to the Arbitrator may be continued.

(ii) Claims upto the value of Rs.2. Lakhs be referred to Departmental arbitration.

(iii) Claims above the value of Rs.2 lakhs be referred to the Court.

(iv) If both the parties agree to the award passed by the Arbitrator there is no need to file it in the Court and obtain a decree on it.

(v) If the parties move the Court under the Arbitration Act, 1940 (Central Act X of 1948) then

the provisions of the said Act have to be followed and the judgment of the Court shall be final.

(vi) In the case of Tamil Nadu State Construction Corporation Limited the Commissioner and Secretary to Government Public Works Department will be the arbitrator in disputes between the Corporation and the Highways and Rural Works Department. The orders issued in G.O.Ms.No.1344, Finance (CFC) dated 27.09.1979 in this regard may be followed scrupulously. ”

14. Relying upon the aforesaid Government Order the learned Special Government Pleader would contend that the very reference to the arbitration should not have been made and therefore the Hon'ble Arbitrator had no jurisdiction to decide the dispute. According to him, since the Hon'ble Arbitrator did not have jurisdiction to enter upon reference itself, the award is a nullity and the said question can be raised in execution proceedings under Section 47 of the Code of Civil Procedure.

15. It is the further submission of the learned Special Government Pleader that the order of the Hon'ble Supreme Court had left all questions open, therefore, it was open to the applicants herein to raise the question of

jurisdiction under Section 16(2) of the Arbitration Act. He would also question the correctness of the decision of the Hon'ble Arbitrator under Section 16(2) on the question of jurisdiction rendered after the remand order dated 28.03.2011 made in OP.Nos.169 and 170 of 2010.

16. It is the further contention of the learned Special Government Pleader that whether the Court or Authority which lacks inherent jurisdiction decides the matter, it is open to the parties to raise the said issue in execution proceedings under Section 47 of the Code of Civil Procedure. He would also draw my attention to various decisions of the Hon'ble Supreme Court as well as this Court and other High Courts.

17. Contending contra Mr.S.Udayakumar, learned counsel appearing for the respondents/ decree holders would strenuously contend that it is not open to the applicants to object to the jurisdiction of the Hon'ble Arbitrator, inasmuch as the order passed by the Hon'ble Supreme Court appointing the sole Arbitrator is a consent order and therefore, the applicants should be deemed to have waived their right to object to the jurisdiction of the Hon'ble Arbitrator.

18. It is his further contention that even assuming that the applicants have a right to raise the question of jurisdiction, they cannot do it under Section 47, inasmuch as they had raised the said question before the Hon'ble Arbitrator and the Hon'ble Arbitrator has decided it in one way. The attempt made by the applicants to have the award set aside under Section 34 having failed, it is not open to the applicants to raise the question of jurisdiction once over again in the Executing Court. He would also contend that the Executing Court cannot go behind the decree.

19. From the above submissions of the counsel on either side, the sole question that arises for determination in these applications is as to Whether the applicants could be allowed to raise the question of jurisdiction in the Executing Court under Section 47 of the Code of Civil Procedure and term the awards as nullity?

20. Section 47 of the Code of Civil Procedure reads as follows:-

47. Questions to be determined by the Court executing decree

(1) All questions arising between the parties to the suit in which the decree was passed, or their

representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

¹[* * *] Sub-section (2) omitted by Act No. 104 of 1976, sec. 20 (w.e.f. 1-2-1977).

(3) *Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.*

²[Explanation I.-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) *For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and*

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

21. In a recent decision, the Hon'ble Supreme Court in ***Brakewell Automotive Components (India) (P) Ltd. vs. P.R. Selvam Alagappan*** reported in **2017 (5) SCC 371** had summarized the scope of the powers available to the Executing Court under Section 47 as follows:-

“ 20. It is no longer *res integra* that an Executing Court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus inexecutable. An erroneous decree cannot be equaled with one which is a nullity. There are no intervening developments as well as to render the decree inexecutable.

21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking

and on untenable and purported grounds having no bearing on the validity or the executability thereof.”

22. In *Dhurandhar Prasad Singh v. Jai Prakash University and Others* reported in **2001 (6) SCC 534**, the Hon'ble Supreme Court had reiterated that the exercise of power under Section 47 of the Code of Civil Procedure is microscopic and lies in a very narrow inspection hole and an executing Court can allow objection to the executability of the decree if it is found that the same is void *ab initio* and nullity, apart from the ground that it is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.

23. We have to necessarily examined the contention of Mr.Sricharan Rangarajan, learned Special Government Pleader with reference to the observations of the Hon'ble Supreme Court extracted above. The Hon'ble Arbitrator was appointed in the case on hand by the Hon'ble Supreme Court. The order of the Hon'ble Supreme Court referred to supra makes it clear that it will be open to the parties to raise all disputes before the Hon'ble Arbitrator.

That would mean that the question of jurisdiction was also left open to be raised before the Hon'ble Arbitrator.

24. Originally while passing the award, the Hon'ble Arbitrator did not decide on the objections raised under Section 16(2) of the Arbitration Act. After the remand order was made by this court in OP.Nos.169 and 170 of 2010, the Hon'ble Arbitrator had considered the questions relating to jurisdiction raised under Section 16(2) and has rejected the same by an order dated 10.06.2013. An attempted challenge to the award of the Hon'ble Arbitrator including the order dated 10.06.2013 had also failed.

25. Section 16 of the Arbitration and Conciliation Act, 1996 enables the parties to raise questions relating to jurisdiction. Section 16(2) provides the time within which such objections should be raised. Section 16(6) enables a party aggrieved by an arbitral award to challenge the same in accordance with Section 34 of the Arbitration Act. Section 36 of the Arbitration Act which provides for enforcement of the awards makes an award equal to that of a decree of a civil Court and enables the decree holder or the person in whose favour an award has been passed to execute it as if it were a decree of a civil

court. Section 37 of the Arbitration Act, which provides for appeals against orders passed during the course of arbitration proceedings enables an appeal against the order of the Arbitrator **“accepting the plea referred in sub-section (2) or sub-section (3) of section 16;”**

26. The legislature in its wisdom has not provided for an appeal against a rejection of a plea under Section 16(2) or 3. If the Hon'ble Arbitrator accepts the plea of lack of jurisdiction and refuses to proceed with the arbitration, the order of the Hon'ble Arbitrator is made appealable under Section 37(2)(a). On the other hand, if the Hon'ble Arbitrator upholds his jurisdiction and decides to proceed with arbitration, the said order is not amenable to an appeal under Section 37.

27. Section 16(5) enables a party aggrieved by such ruling on jurisdiction made by the Hon'ble Arbitrator to challenge the same under section 34 along with the main award. From the scheme of the Act it could be seen that a decision of the question relating to jurisdiction made by the Hon'ble Arbitrator is amenable to challenge either under Section 37(2)(a) or under Section 34 depending on the nature of the order. As already pointed out in the case on

hand, the challenge under Section 34 had miserably failed on the ground of limitation.

28. Mr.Sricharan Rangarajan, learned Special Government Pleader would make a valiant attempt to make it appear that the award is without jurisdiction, therefore it is a nullity. He would also invite my attention to the judgment of the Hon'ble Supreme Court in ***Sushil Kumar Mehta Vs. Gobind Ram Bohra*** reported in ***1990 (1) SCC 193***, wherein, the Hon'ble Supreme Court had held that a decision on the question relating to jurisdiction cannot operate as *resjudicata* in a subsequent suit.

29. Relying upon the said judgment, Mr.Sricharan Rangarajan would contend that the fact that the decision of the Hon'ble Arbitrator on the question of jurisdiction had become final cannot preclude the applicants from raising the question of nullity in Execution Proceeding.

30. He would also rely upon the judgment of the Hon'ble Supreme Court in ***Hasham Abbas Sayyad Vs. Usman Abbas Sayyad*** reported in ***AIR 2007 SC 1077***, wherein, the Hon'ble Supreme Court had held that the principles of

estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/ Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be *coram non judice* being a nullity and the same ordinarily should not be given effect to.

31. In ***Sarwan Kumar Vs. Madan Lal Aggarwal*** reported in ***AIR 2003 SC 1475***, the Hon'ble Supreme Court again had reiterated the position that the decree passed by a court without jurisdiction or a court which lacks inherent jurisdiction is a nullity and non-est. Its invalidity can be set up whenever it is sought to be enforced or it is acted upon as a foundation of the right even at the stage of execution or in collateral proceedings.

32. In ***Harsahad Chiman Lal Modi Vs. DLF Universal Ltd.***, reported in ***(2005) 7 SCC 791***, the Hon'ble Supreme Court again reiterated the principle that the invalidity of a decree on the ground that it is a nullity can be set up even in execution proceeding.

33. The learned Special Government Pleader has also drawn my attention to the various decisions of this court as well as the Hon'ble Supreme Court, wherein, applicability of the Code of Civil Procedure to arbitration proceedings pending before the courts was considered. I do not propose to burden this judgment with all those case laws, as the law on applicability of the Code of Civil Procedure in respect of arbitration proceedings pending in courts is fairly well settled, in view of the decision of the Hon'ble Supreme Court in *ITI Ltd. Vs. Siemens Public Communications Network Ltd.* reported in *AIR 2002 SC 2308*, wherein, the Hon'ble Supreme court had concluded that in view of the language of Section 36 of the 1996 Act the provisions of the Code of Civil Procedure relating to execution of a decree would be applicable to proceedings for execution of the awards passed by the Arbitrators.

34. Mr.S.Udayakumar, learned counsel does not dispute the proposition of law advanced by the learned Special Government Pleader. He would however submit that a decision of the Arbitrator under Section 16(2) of the Arbitration and Conciliation Act on his own jurisdiction is made appealable under Section 37(2)(a), if the Arbitrator concludes that he has no jurisdiction and terminates the proceedings. On the other hand, if the Arbitrator is to

uphold his jurisdiction and decide to continue the proceedings, the remedy open to the person against whom an award has been passed is to challenge it under Section 34. Having failed to challenge that decision under Section 34 or having failed in the belated challenge, the applicants cannot be allowed to re-agitate the said issue in execution proceedings purportedly under Section 47 of the Code of Civil Procedure.

35. Mr.S.Udayakumar, would also draw my attention to the judgment of the Hon'ble Supreme Court in ***Lion Engineering Consultants Vs. State of Madhya Pradesh and others*** reported in **(2018) 16 SCC 758**, wherein, a three Judge Bench of the Hon'ble Supreme Court had observed as follows:-

“The scheme of the Act is thus clear. All objections to jurisdiction of whatever nature must be taken at the stage of the submission of the statement of defence, and must be dealt with under Section 16 of the Arbitration Act, 1996. However, if one of the parties seeks to contend that the subject-matter of the dispute is such as cannot be dealt with by arbitration, it may be dealt under Section 34 by the Court. ”

36. He would also draw my attention to the judgment of the Hon'ble Supreme Court in *Indian Farmers Fertilizer Cooperative Limited Vs. Bhadra Products* reported in (2018) 2 SCC 534, wherein, the Hon'ble Supreme Court has considered the scope of Section 16 of the Arbitration Act. While doing so, the Hon'ble Supreme Court had observed as follows:-

“Under sub-section (6), a party aggrieved by such an arbitral award may make an application for setting aside such arbitral award in accordance with [Section 34](#). In other words, in the challenge to the award, the party aggrieved could raise the contention that the Tribunal had no jurisdiction to pass it or that it had exceeded its authority, in passing it. This happens when the Tribunal proceeds to pass an award. It is in the context of the various sub-sections of [Section 16](#) that one has to understand the content of the expression “jurisdiction” and the scope of the appeal provision. In a case where the Arbitral Tribunal proceeds to pass an award after overruling the objection relating to jurisdiction, it is clear from sub-section (6) of [Section 16](#) that the parties have to resort to [Section 34](#) of the Act to get rid of that award, if possible. But, if the Tribunal declines jurisdiction or declines to pass an award and

dismisses the arbitral proceedings, the party aggrieved is not without a remedy. [Section 37\(2\)](#) deals with such a situation. Where the plea of absence of jurisdiction or a claim being in excess of jurisdiction is accepted by the Arbitral Tribunal and it refuses to go into the merits of the claim by declining jurisdiction, a direct appeal is provided. In the context of [Section 16](#) and the specific wording of [Section 37\(2\)\(a\)](#) of the Act, it would be appropriate to hold that what is made directly appealable by [Section 37\(2\)\(a\)](#) of the Act is only an acceptance of a plea of absence of jurisdiction, or of excessive exercise of jurisdiction and the refusal to proceed further either wholly or partly. ”

37. Relying upon the observations of the Hon'ble Supreme Court extracted supra, Mr.S.Udayakumar, would contend that it was open to the applicants to have challenged the award under Section 34 on the ground of jurisdiction also and having failed in their attempt to project such a challenge, the applicants cannot be permitted to raise the question all over again and plead that the award is a nullity and the Hon'ble Arbitrator lacked inherent jurisdiction to entertain the dispute.

38. I have considered the judgments relied upon by both the counsel. The question of jurisdiction is a question in hues. If there is total lack of jurisdiction on the court or the Tribunal, it can be said that an order passed by such court or Tribunal is a nullity. But, if such court or Tribunal is empowered to decide on its own jurisdiction and such court or Tribunal wrongly decides the question of jurisdiction can it be said that there was a total lack of jurisdiction.

39. While it is the contention of the learned Special Government Pleader that the Hon'ble Arbitrator by wrongly deciding the question of jurisdiction by his order dated 10.06.2013 has usurped the jurisdiction in himself and therefore the award passed by him is a nullity, Mr.S.Udayakumar would contend that having not challenged the order of the Hon'ble Arbitrator dated 26.02.2013, the applicants cannot contend that the award of Arbitrator is a nullity. When a right to take a decision is vested in an Authority, the Authority has the right to decide wrongly also. It is open to the party aggrieved to challenge such wrong decision by a process known to law.

40. Having failed to challenge or having failed in its challenge, the party aggrieved cannot be allowed to re-open the question in execution. As already pointed out, the Hon'ble Supreme Court has repeatedly held that the scope of Section 47 is very limited, microscopic and lies in a very narrow inspection hole and an executing Court can allow objection to the executability of the decree if it is found that the same is void ab initio and nullity.

41. In *IFCO Ltd. Vs. Badra Products* cited *supra* the Hon'ble Supreme court has pointed out the remedies that are available to a person who is aggrieved by an order of the Arbitrator made under Section 16(2) either accepting or rejecting the objection relating to the jurisdiction.

42. If we are to examine the proceedings in the case on hand, in the light of the observations made by the Hon'ble Supreme Court in *IFCO Ltd. Vs. Badra Products* cited *supra* it cannot be said that the award of the Arbitrator is a nullity. After all, the Hon'ble Arbitrator was appointed by the Hon'ble Supreme Court, of course, with a right to the parties to raise all questions before him.

43. The applicants had raised a question of jurisdiction before the Hon'ble Arbitrator and the Hon'ble Arbitrator has decided it in one way. It was open to the applicants to have challenged the said decision of the Arbitrator under Section 34 of the Arbitration Act. In fact the applicants challenged the said decision, but, they were not successful in the said challenge because their applications under Section 34 were dismissed as barred by limitation. An award passed by the Hon'ble Arbitrator cannot be held to be nullity, even if the Hon'ble Arbitrator has decided the question wrongly under Section 16(2).

44. While narrating on the scheme of the Act In *Lion Engineerin Consultants* referred to *supra*, the Hon'ble Supreme Court has very clearly held that any objections relating to jurisdiction of whatever nature it may be must be taken at the stage of submission of defence. If one of the parties seeks to contend that the subject matter of the dispute is such it cannot be dealt with by Arbitration, the said question has to be raised under Section 34.

45. No doubt true that the Code of Civil Procedure has been made applicable to arbitration proceedings when they are before the civil court, but,

at the same time, the provisions of the Arbitration Act, which is a special enactment would definitely in my considered opinion override the provisions of the Code of Civil Procedure. Therefore, when a scheme is provided under the Arbitration Act for challenging an award on various grounds, the same cannot be overstepped by invoking Section 47 of the Code of Civil Procedure.

46. I am therefore of the considered opinion that the objections as to the validity of the award, raised purportedly under Section 47 of the Code of Civil Procedure cannot be entertained at this stage of the proceedings and hence, the order of the learned Master does not call for any interference.

47. In view of the above, the applications in **A.Nos.520 and 522 are dismissed**, and **A.Nos.521 and 523** being applications for stay will also stand dismissed, in view of the dismissal of the main applications.

48. Before parting with this case, I wish to place on record the careless manner in which the proceedings have been conducted by the State. At every stage of the proceedings there had been inordinate delay on the part of the State. After appointment of the Hon'ble Arbitrator by the Hon'ble Supreme

Court, the Authorities took their own time to file their reply statement before the Arbitrator and after seeking several adjournments they finally filed the objections under Section 16(2) on 12.03.2009. The Hon'ble Arbitrator has pointed out that in fact the objections under Section 16(2) were filed only after issuance of show cause notice under Section 25(b) of Arbitration and Conciliation Act, 1996.

49. The Hon'ble Arbitrator had rejected the objection to the jurisdiction mainly on the ground of delay. Thereafter, the execution proceedings were launched on 9th December 2013 in EP.Nos.43 and 44 of 2014 and the Application under Section 34 came to be filed only on 05.11.2014. The Original Petitions, which were presented on 05.11.2014 were eventually numbered as O.P.Nos.110 and 111 of 2018 nearly after 3 ½ years. Even these execution proceedings have been pending for nearly five years now. It is rather unfortunate that the State Government which is a party has adopted all dilatory tactics to avoid execution of the awards passed in the instant cases.

50. In fact, the Hon'ble Mr.Justice Abdul Quddoshe has in CRP.Nos.4036 and 4034 of 2014 has pointed out the indifference shown by the State

Government and its Constituents in prosecuting the litigations before Court and the learned Judge has directed formulation of a Litigation Policy which is properly and effectively implemented.

51. I am left with no other option but to endorse the observations made by the learned Judge. I would even go a step further and recommend stern action against the officials who failed in their duty to challenge the orders of court within the time permitted under law.

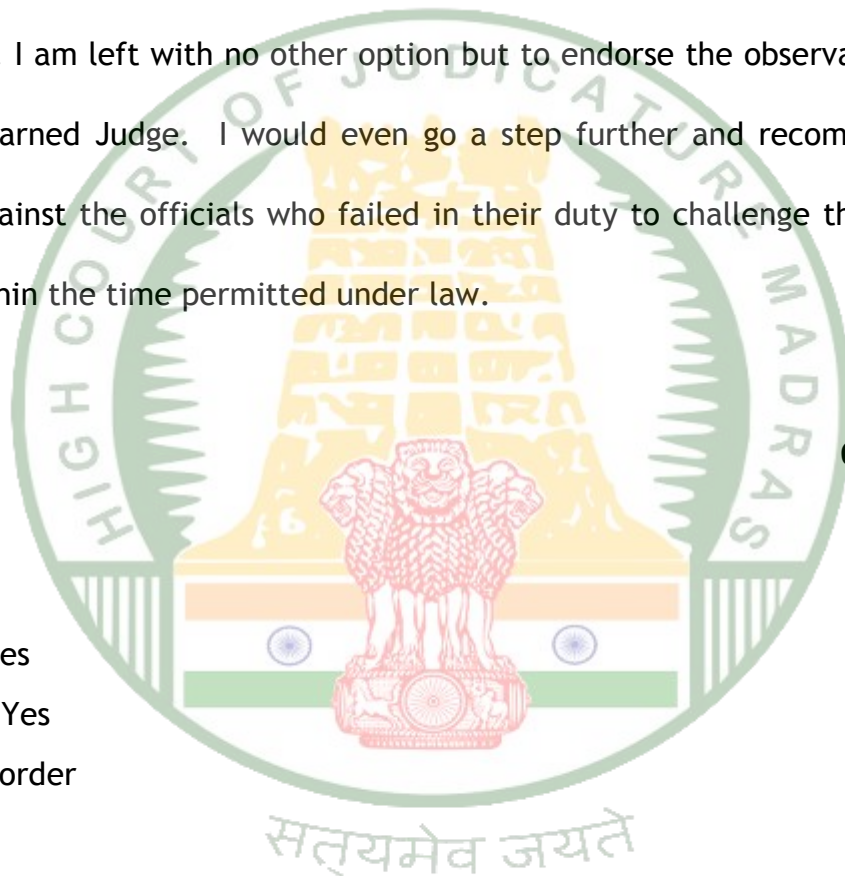
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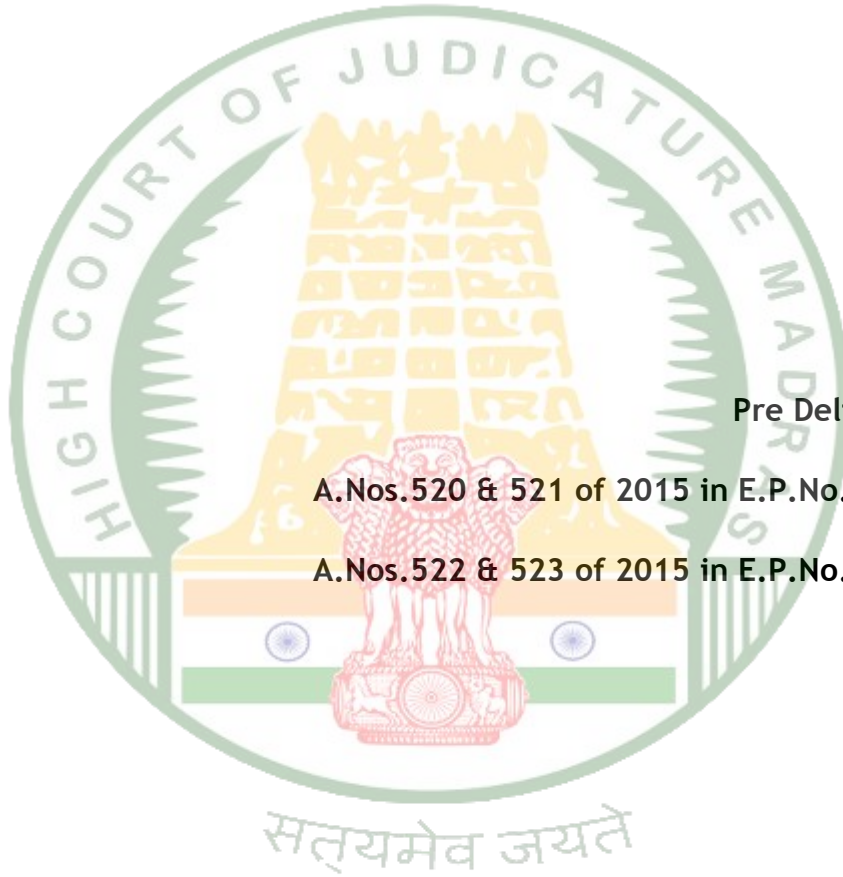
Speaking order



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R.SUBRAMANIAN,J.

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Pre Delivery Order
in
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