

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Rev.Appln.No.63/2019

Marg Limited rep.by its
Managing Director
Shri G.R.K.Reddy,
Office at No.4/318, Rajiv Gandhi Salai
Kottivakkam, Chennai 600 041.

.. Applicant
/ Petitioner

Vs

1.Van Oord Dredging and Marine
Contractors BV Indian Project Office
VI Floor, Shanghvi Udayan
B-18, Vaikunthlal Mehta Road
JVPD Scheme, Mumbai-600 049.

2.Hon'ble Shri Justice D.Raju [Retd]
[Presiding Arbitrator]
Old No.39, New No.20, Pooram Prakasam
Road, Balaji Nagar, Royapettah
Chennai 600 014.

3.Hon'ble Shri Justice B.N.Shrikrishna [Retd]
[Member Arbitrator]
46, "SHYAMALA", Lotlikar Marg
Behind Don Bosco High School
Mathunga, Mumbai 400 019.

4.Hon'ble Shri Justice K.Sampath [Retd]
 [Member Arbitrator]
 New No.11, II Street, Jagadambal Colony
 Royapettah, Chennai 600 014.

.. Respondents

Prayer:- Review filed under Order 47 Rule 1 read with section 114 of the Civil Procedure Code to review the order dated 15.11.2018 in OSA.No.394/2018.

For Applicant : Mr.Murali Kumaran for
 Mr.Akhil Bhansali

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The review petitioner is the appellant in OSA.No.394/2018 and also petitioner in OP.No.650/2013. The said Original Petition was filed under section 34 of the Arbitration and Conciliation Act, 1996 [in short "Arbitration Act"] to set aside the Award dated 14.04.2013 passed by the respondents 2 to 4 – learned Arbitrators. The said petition, after contest, came to be dismissed vide order dated 02.02.2018 and challenging the legality of the same, the above Original Side Appeal was preferred and after contest, it also came to be dismissed vide judgment dated 15.11.2018. The present review petition has been filed to review the said judgment.

2 The facts leading to the present round of litigation have been narrated in detail and in extenso in the judgment sought to be reviewed by the petitioner and therefore, for the sake of brevity, it is unnecessary to restate the facts once again.

3 The only ground urged by the learned counsel for the review petitioner is that Ground No.E and it is relevant to extract the same:-

"E.The judgment sought to be reviewed, has upheld the order passed by the learned Single Judge under sec.34[2] of the Arbitration Act, without deciding the arguments put forth that the Arbitral Award ought to have been set aside u/s.34[2], as the same was patently arbitrary and illegal and shocking to the conscious as no reasonable man could have arrived as the arbitral award;

a) construed the contract as one of day charter, when the contract in fact is one for execution of work of creating a channel with specified length, breadth and depth ;

b) Passed the award in favour of the party which has abandoned the work and thus breached the contract, and against the party which has suffered the breach and loss.

c) Has awarded payment on the basis of privileged inter-office memos, ignoring the terms of the contract in clauses 1, 5 & 11.4 stipulating the payments when admittedly the inter-office memos do not fall under the scope or satisfy the requirements in the above mentioned clauses."

4 The learned counsel for the review petitioner would submit that the Arbitral Tribunal had framed 16 issues and Issue No.10 was "*whether the scope of the work under the contract was amended by the particular terms and conditions of the addendum No.2?*" The Arbitral Tribunal had answered the said issue in Paragraph No.16 of the Award. This Court had dealt with the grounds/points urged in respect of the said finding and in paragraphs No.11 and 12 of the judgment, has taken into consideration the findings rendered by the Tribunal in paragraph No.16 and in Paragraph No.17, also held that the terms and conditions of the contract cannot be substituted by new terms and further recorded the finding that unless the findings rendered by the Arbitral Tribunal is vitiated on account of patent illegality, perversity or contravention of any of the provisions of the Act or against public policy, it cannot be interfered with and also placed reliance upon the judgments rendered by the Apex Court reported in **2015 [3] SCC 49**

[Associated Builders Vs. Delhi Development Authority] and **2015 [5] SCC 739 [Swan Gold Mining Limited V. Hindustan Copper Limited]**. The learned counsel for the review petitioner is making an attempt to reconsider the findings rendered by the Arbitral Tribunal as confirmed by the learned Single Judge in the Original Petition which came to be confirmed in the judgment passed in the Original Side Appeal, which is the subject matter of review.

5 The Hon'ble Supreme Court of India in the decision reported in **AIR 1995 SC 455 [Smt.Meera Bhanja Vs. Smt.Nirmala Kumari Choudhury]**, had observed that "*the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC and it may not be exercised on the ground that the decision was erroneous on merits. The power of review should not be confused with the Appellate power which may enable the Appellate Court to correct all manner of error committed by the Subordinate Court*". It is also a well settled position of law that error apparent on the face of the record must be such an error which must strike one on mere looking of the record and would not require a long drawn reasoning or points where there may be conceivably two opinions. The petitioner, under the guise of filing this

review, wants to reagitate the said issue afresh. In the considered opinion of the Court, the same is impermissible in law and that apart, the scope of interference in the Arbitral Award is very limited and to review the same, the scope is much more limited. This Court having found no merits in the review petition, is not inclined to entertain the same.

6 In the result, the review application/petition is dismissed at the admission stage itself. No costs.

[M.S.N., J.,]

[M.N.K., J]

28.02.2019

Internet : Yes

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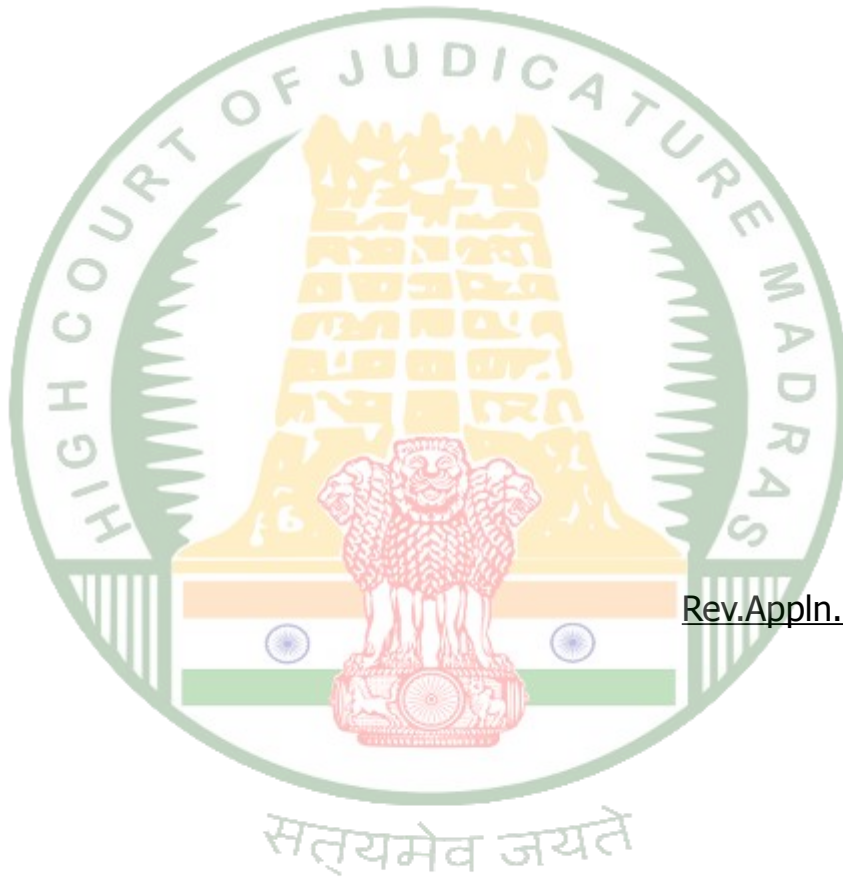
To

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