

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved	23.12.2021
Pronounced	16.02.2022

CORAM**THE HONOURABLE MR.JUSTICE C.SARAVANAN****Rev. Appl.No.16 of 2021**

in

O.P.No.816 of 2018

1. Lakshmi Royal Home Constructions,
Represented by its Managing Partner, P. Nithin,
G10 & G11, Bhanu Enclave,
ESI Erragada,
Hyderabad-500 035.

2. Lakshmi Constructions,
Represented by its Managing Partner,
D.V.Sudhakar,
G10 & G11, Bhanu Enclave,
ESI Erragada,
Hyderabad-500 038.

... Applicants

Vs.

L.S.Property Developers Pvt. Ltd.,
23/11, Bash Street,
Choolaimedu,
Chennai-600 094.

... Respondent



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PRAYER: Review Application is filed under Order XIV Rule 8 of the Rules Read with under Section 151 of CPC to review the order dated 20.09.2018 passed in O.P.No.816 of 2018.

For Applicants : Mr.N.Ramakrishnan
for M/s.Waraon & Sai Rams

For Respondent : Mr.Guberan
for Rank Associates

ORDER

Heard the learned counsel for the applicants and the learned counsel for the respondent.

2. By an order dated 20.09.2018, O.P.No.816 of 2018 was disposed by following the decision of the Hon'ble Supreme Court in the case of **M/s.Duro Felgnera, S.A. Vs. M/s.Gangavaram Port Limited** reported in (2017) 9 SCC 729.

3. By the aforesaid order, Hon'ble Mr.Justice K.Mohan Ram, former Judge of this Court was appointed as a Sole Arbitrator to decide the dispute between the petitioner and the respondents. Aggrieved by the



aforesaid order SLP(Civil).No.6279 of 2019 was filed. The said Special Leave Petition (Civil) was however withdrawn with a liberty so as to file a review petition before this Court.

4. By the aforesaid order, the Hon'ble Supreme Court also stated that in the event of filing to file the review petition, the petitioner may challenge the Impugned Order in the aforesaid Special Leave Petition (Civil) as well. The Relevant portion from the said order reads as under:

“Mr.Syam Divan, learned Senior Counsel for the petitioners seeks permission to withdraw this special leave petition so that he can file a Review Petition before the High Court.

2. The Special leave petition is dismissed as withdrawn with the aforesaid liberty.

3. In the event of failing in the Review Petition, he may challenge the impugned order in this SLP as well.”

5. Though the above order was passed by the Hon'ble Supreme Court as early as on 08.03.2019, no steps were taken for numbering the review application. The review application appears to be filed on 05.04.2019. It has been numbered only in the year 2021.



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6. The facts on record also indicates that the respondent herein had filed an application No.3535 of 2021 in O.P.No.816 of 2018 for extending the time for commencing the Arbitral Proceedings.

7. The aforesaid application was ordered as follows:

“4. Whereas the learned counsel appearing for the respondent would contend that since the review application is filed, he will work it out separately and he has no objection for extending the time for commencing the Arbitral Proceedings.

5. In such a view of the matter, this application is ordered and six months time is extended, from the date of receipt of a copy of this order, to commence the Arbitral Proceedings, in O.P.No.816 of 2018.”

8. The only ground for review the order is that the respondent herein has not right to invoke the arbitration clause, since the agreement was neither executed by the respondent nor acted upon by the parties and that the agreement was substituted by a MOU dated 19.08.2015 which was abandoned and a fresh rights were created under MOU dated 04.01.2018.



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9. This very issue can be decided by the arbitrary by examining the agreement/MOU dated 19.08.2015 and 04.01.2018 respectively. This is how the issue has to be decided in the light of decision of the Hon'ble Supreme Court has also held in **M/s.Duro Felgnera, S.A. Vs. M/s.Gangavaram Port Limited** reported in (2017) 9 SCC 729.

10. There is no error apparent on the face of record in the order dated 20.09.2018 to review the said order. Further the applicant has shown only attempted to prolong the longevity of the litigation. By now, the issue would have been decided by one way or the other if the arbitrary was allowed to decide the very same issue under Section 16 of the Arbitration and Conciliation Act, 1996.

11. There is no merits in this application. Though this review application deserves to be dismissed with cost, I am referring from imposing any cost on the applicant. Accordingly, this application to review order dated 20.09.2018 stands dismissed. No costs.

16.02.2022

Speaking/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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C.SARAVANAN, J.

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