

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No.773 of 2019

1.Union of India rep. by its
General Manager,
Southern Railway, Park Town,
Chennai-600 003.

2.The Chief Engineer,
Metropolitan Transport Project,
Southern Railway,
Egmore,
Chennai-600 008.

..Petitioners

Vs

M/s.C.T.Ramanathan & Co.,
No.79 & 80, Ansari Street,
Ram Nagar,
Coimbatore-641 009.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Arbitral Award dated 27.02.2019 passed by the learned Arbitrator in disputes arising out of the Letter of Acceptance No.MTP/W/496/RTS/392 dated 10.03.2003 insofar as the award of pendente lite interest at Interest 9% p.a. For a sum of Rs.26,41,800/- from 05.07.2004 to till the date of award i.e. 27.02.2019 is concerned.

For Petitioners

: Mr.P.T.Ramkumar

For Respondent

: M/s.Amalraj S.Penikilapatti

ORDER

This petition is filed to set aside the arbitral award dated 27.02.2019 in so far as it grants interest during the pre-reference period and pendente lite interest at 9% p.a.

2. I heard the learned counsel for the petitioners and the learned counsel for the respondent. By consent, the O.P. is taken up for final disposal at the admission stage.

3. The scope of this petition lies within a very narrow compass, namely, as to whether the grant of pre reference interest and pendente lite interest is prohibited by the contract. The learned counsel for the petitioners pointed out that clause 64.5 of the General Conditions of the Contract stipulates no interest shall be payable on the whole or any part of the money for any period, till the date on which the award is made. By relying on the said clause, the learned counsel for the petitioner contended that the award in respect of the grant of interest is patently illegal and is liable to be set aside. In this connection, the learned counsel further submitted that the Hon'ble Supreme Court held in several cases relating to railway contracts such

as *Sree Kamatchi Amman Construction vs. Railways [(2010) 8 SCC 767]* that the arbitral award cannot carry interest when there is a specific prohibition in the contract.

4. The learned counsel for the respondent also fairly submitted that Clause 64.5 of the General Conditions of the Contract prohibits the grant of pre-reference and pendente lite interest.

5. Upon considering the oral submissions and examining the records, it is evident that the award of pre-reference and pendente lite interest cannot be sustained in the light of the specific contractual clause viz., 64.5 of the General Conditions of the Contract, which prohibits the award of interest during the said period. Apart from the judgment cited above, this position was affirmed in cases such as *Sayed Ahmed vs. State of Uttarpradesh [(2009) 2 SCC 26]* and *Hyder Consulting (UK) Ltd., vs. Governor, State of Orissa [(2015) 2 SCC 189]*.

6. The said error is apparent on the face of the award and therefore, renders the award patently illegal in that regard.

SENTHILKUMAR RAMAMOORTHY,J

Consequently, this petition is allowed and the award is set aside in so far as it relates to the grant of pre-reference and pendente lite interest.

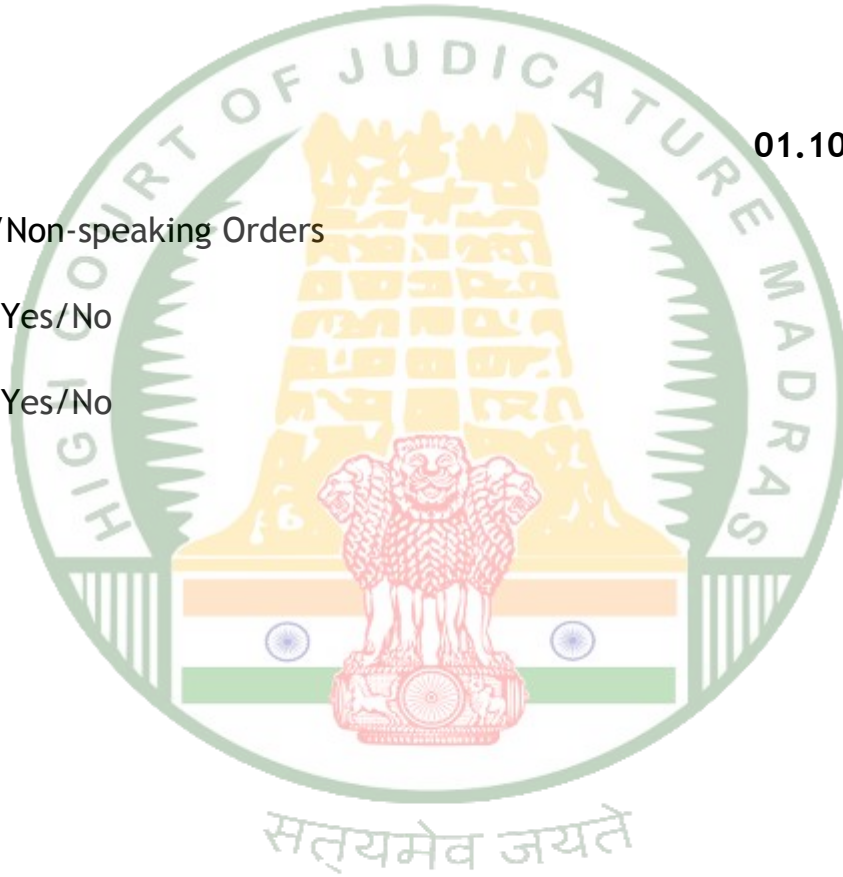
01.10.2019

Speaking/Non-speaking Orders

Index : Yes/No

Internet: Yes/No

kal



WEB COPY

O.P.No.773 of 2019