

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 03RD DAY OF NOVEMBER 2020

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.Nos.1774 and 1775 of 2020
IN
E.P.No.48 of 2019

Thiru.RAJU K.
Sole Proprietor,
M/s.R.K.Construction Company,
No.A1, R.K.Flats,
Jeevanandam Street,
Virugambakkam,
Chennai- 600 092 ..Petitioner/Decree Holder

TAMILNADU HOUSING BOARD,
Rep.by the Executive Engineer,
K.K.Nagar Division,
Ashok Nagar Shopping Complex,
Chennai-600 083.

Presently at No.671,
TNHB Complex,
Anna Nagar West Extension,
Thirumangalam, Chennai-101

..Respondent/Judgment debater

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Anna Nagar West Extension,
Thirumangalam, Chennai-101

..Applicant/Judgment debater
in both applications

-Vs-

Thiru.RAJU K.
Sole Proprietor,
M/s.R.K.Construction Company,
No.A1, R.K.Flats,
Jeevanandam Street,
Virugambakkam,
Chennai- 600 092.

..Respondent/Decree Holder
in both applications

A.No.1774 of 2020:

This application praying that this Hon'ble court be please to
setting aside the order of the Learned Master in E.P.NO.48 of 2019 dated
03/03/2020 for the following among other grounds.

GROUND

1. The Learned Master has failed to accept that the petitioner/Decree
Holder claimed the amount based on arbitrator award only and not on the
Appeal order of the Hon'ble Court. The Petitioner has not claimed the
amount without following the common order passed by the Hon'ble High
Court in O.P.Nos.548 to 551, 559 and 560 of 1995 and 145, 146, 155 to 157

and 200 of 1996 dated 21.07.2007. In the award 18% rate of interest (simple) was ordered by Arbitrator. But 18% rate of interest to the claim amount was not given in the High Court Order. It is very clear in the common order of the High Court dated 21.07.2007 in Para No.21 Page 31. “All the other awarded claims are an facts and within the parameters of the contract and hence confirmed”. As per the contract agreement the petitioner is not entitled to get interest for any claim amount. So as per the common order of the Hon'ble High Court dated 21.07.2007, the petitioner is not entitled to claim interest for the award claim amount.

2. The learned Master had failed to accept that the petitioner is not entitled to any interest as per the High Court Order for the award amount, the petitioner is entitled to claim only Rs.2,02,365.88 in the above case as given in the calculation of the Applicant.

3. The learned master had not accepted that the Respondent had not claimed the Award amount as per the Hon'ble High Court order in the year 2007 but he had claimed the amount after a lethargically after a delay of more than 11 years with interest. There is no interest awarded in the High Court order.

A.No.1775 of 2020:

all further proceeding of the Order in E.P.48/2019 dated 03/03/2020 on the file of the Learned Master Court, pending disposal of the Appeal.

These Applications coming on this day before this court for hearing the court made the following order:

This appeal has been filed against the Order passed by the learned Master negating the contention of the judgment debtor with regard to the interest aspect along with an application to stay all further proceedings in the execution proceedings.

2. It is contended by the judgment debtor that interest at the rate of 18% per annum cannot be awarded as the Judgment of this Court in O.P.Nos.551 of 1995 and 146 of 1996 did not deal with the interest aspect. Therefore, the interest claimed by the respondent is not according to law.

3. The learned Master after considering the entire arbitral award and the judgment of this Court in the above referred Original Petitions had held that the learned Arbitrator has Ordered interest at the rate of 18% per annum and this Court also confirmed all the claims within the parameters of the contract. Further, this Court has not modified the nature of interest ordered by the arbitrator and ultimately, this Court confirmed the Order passed by the learned arbitrator, except modifying the award under certain

heads. However, the interest aspect has not been challenged nor modified. Such being the position, it cannot now be said by the applicant that the interest claimed by the decree holder as per the arbitral award is not maintainable. Such contention cannot be countenanced when the matter had already reached finality and the interest awarded by the arbitrator has been confirmed by this Court under section 34 of the Arbitration and Conciliation Act.

4. It is very unfortunate that even after the award reached finality in the year 2007, the judgment debtor is still dragging the matter without complying the Order of this Court and they are not honouring the award which is binding on them. For more than a decade, they have failed to deposit the amount despite the award has reached its finality in the year 2007 itself. If at all any expenditure accrued through the interest, to which the judgment debtor has to be blamed for themselves for such expenditure. If the award amount has been deposited immediately in the year 2007, they would have avoided further interest till the date of realisation. But nobody has taken any steps in this regard to protect the interest of the Housing Board. In such view of the fact, the decree holder is entitled to the amount claimed as per the award. The applicant/judgment debtor is directed to deposit the amount within a reasonable time.

5. Accordingly, this appeal is dismissed. Consequently, connected application is closed.

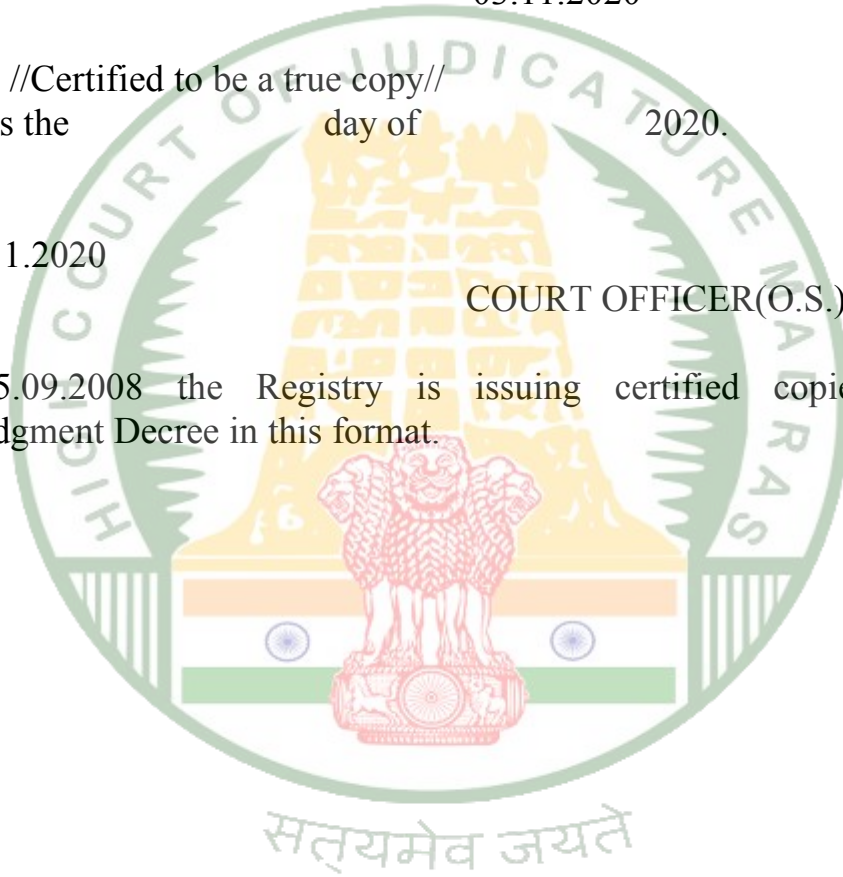
Sd/-N.S.K.J.
03.11.2020

//Certified to be a true copy//
Dated this the day of 2020.

S.U./10.11.2020

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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