

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY THE 16TH DAY OF AUGUST 2021

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.P.NO.166 OF 2015

In the matter of The Arbitration
and Conciliation Act

And

In the matter of the Arbitral
Award Dated 23.08.2011 made
in relation to Disputes arising
out of Agreement
No.MTP/Civil/385-01, dated
09.10.2001.

Metropolitan Transport Project(Railways)
Represented by its Chief Administrative Officer,
Periyar E.V.R.High Road,
Egmore, Chennai – 600 008. ...Petitioner

Vs

1. M/s.Simplex Infrastructures Limited,
Represented by its Power of Attorney Holder,
Mr.J.S.Raghavan,
No.57, Pantheon road,
Egmore, Chennai – 600 008.
2. Hon'ble Mr. Justice N.V.Balasubramanian(Retired),
No.3, Sankarapuram,
Alamelumangapuram,
Mylapore, Chennai – 600 004. ...Respondents

Original Petition praying that this Hon'ble Court be pleased to set aside the arbitral award dated 23.08.2011 made in relation to disputes arising out of Agreement No.MTP/Civil/385-01, dated 09.10.2001 in so far as claims 1 to 9 are concerned.

This Original Petition along with O.P.No.60 of 2015 coming on this day before this court for hearing in the presence of Mr.M.Vijay Anand, advocate for the petitioner herein and Mr.Thirimbak J.Kannan, advocate for the 1st respondent herein and upon reading the petition and the award dated 23/08/2011 filed herein and this court having observed that there is no reason for re-appreciating the evidence and also on factual aspects, taking note of the fact that the learned Arbitrator has given sufficient reasons for every claim and concluded his award, it cannot be said that there was no reasoning assigned by the learned Arbitrator, such submissions of learned counsel, on perusal of entire arbitral award is nothing, but futile exercise only in order to drag on the proceedings on the pretext of filing the Original Petitions to challenge the well-reasoned arbitral award, hence, this court do not find any of the ground contemplated under Sec.34 of the Act is made out to interfere with the well-reasoned award passed by the learned Arbitrator and **it is ordered as follows:-**

That the O.P.No.166 of 2015 be and is hereby dismissed.

2.That there shall be no costs of this petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 16TH DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S. II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified
copies of the Orders/Judgments.

VSP
29/09/2021

O.P.No.166 of 2015

ORDER

DATED :16.08.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL:04/10/2021

APPROVED ON:04/10/2021

Copy To:-
The Hon'ble Mr. Justice
N.V.Balasubramanian,
Judge(Retd.),
High Court, Madras
No.3, Sankarapuram,
Alamelumangapuram,
Mylapore, Chennai-600 004.
(with covering letter)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

C O R A M

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.P. Nos.60 & 166 of 2015

Metropolitan Transport Project (Railways),
represented by its Chief Administrative
Officer,
Periyar E.V.R. High Road,
Egmore, Chennai-600 008.

... Petitioner in
both O.P.s

Vs

1. M/s. Simplex Infrastructure Limited,
represented by its Power of Attorney
Holder Mr. J.S.Raghavan,
No.57, Pantheon Road,
Egmore, Chennai-600 008.
2. Hon'ble Mr. Justice N.V.Balasubramanian
(Retired),
No.3, Sankarapuram,
Alamelumangapuram,
Mylapore, Chennai-600 004.

... Respondents in
both O.P.s

PRAYER in O.P.No. 60 of 2015 : Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the arbitral award dated 23.08.2011 made in relation to disputes arising out of Agreement No.MTP/Civil/386-01, dated 09.10.2001 in so far as claims 1 to 9 are concerned.

PRAYER in O.P.No.166 of 2015 : Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the arbitral award dated 23.08.2011 made in relation to disputes arising out of Agreement No.MTP/Civil/385-01, dated 09.10.2001 in so far as claims 1 to 9 are concerned.

For Petitioner : Mr.M.Vijay Anand
in both O.P.s

For 1st Respondent
in both O.P.s : Mr.Thirimbak J. Kannan

ORDER

(This case has been heard through video conference)

These Original Petitions have been filed as against the awards passed by the Sole Arbitrator dated 23.08.2011 respectively in two different contracts entered into between the parties.

2. The brief facts leading to the filing of these Original Petitions are as follows :-

So far as O.P.No. 60 of 2015 is concerned, the claimant/1st respondent herein has entered into an agreement No.MTP/Civil/386-1 dated 09.10.2001 with the petitioner for the execution of pile foundation, general RCC works in columns, beams, slabs etc. upto the

platform roof level of the elevated station building at Greenways Road for MRTS – Phase II – Thirumalai to Velacherry. The contract was for the period of 15 months upto 20.08.2002. It is the case of claimant that, the work could not be completed due to primary delay attributed on the part of 1st respondent and there were several extensions granted by the 1st respondent and finally, the work was completed on 30.06.2004.

Similarly, O.P.No. 166 of 2015 is concerned, it is also the other contract entered into an agreement No.MTP/Civil/385-1 dated 09.10.2001 between the claimant and the 1st respondent for the execution of work, which is similar in nature for construction of the elevated station building at Mandaveli for MRTS – Phase II – Thirumalai to Velacherry. As the dispute arose between the parties with regard to difference of work and the amount claimed, the matters were referred to arbitration. The claimant has raised totally nine claims in each applications and the interest being 10th claim. The main defence of the claimant before the learned Arbitrator was fallen within the excepted matters and under various clauses as per the General Conditions of Contract. Therefore, the claimant is not entitled to the claim. Besides, various claims made by the claimant was not falling within the excepted matters and it would contravene various clauses as per the contract, which are tabulated below :-

<i>Sl. No.</i>	<i>Description</i>	<i>Clause No.</i>
1.	Release of amount recovered towards alleged excess cement consumption in the piling work together with interest thereon	2.5.10, 2.6.2.2 (vi), 3.10, 3.11
2.	Additional concrete in piling	3.8, 3.9, 3.10, 3.11 & Description of item No.1 of annexure IV'A'
3.	Earth work in excavation, backfilling and disposal of laying of leveling course concrete for pile cap, tie beams, retaining wall, etc. a) Excavation b) Backfilling c) Disposal	2.2(ii), Description of item No.1- Note (ii), 7 and 8-Note (ii) of annexure IV A
4.	Construction of temporary cofferdam	Note for item Nos. 8 & 9 of annexure IV A
5.	Deviation from crib support to truss support for construction of the road span of the platform slab over the Venkatakrishna Road Bridge	Note for item No.17 of annexure IV A
6.	Compensation towards idling of piling equipments, manpower and establishment due to non-supply of liner plates	3.8.13
7.	Compensation towards over run of establishment	17(2) of GCC and Rider agreement
8.	Charges towards extension of the validity of the Bank Guarantee furnished towards security deposit beyond the original defect liability period	51(3) of GCC 16(2) of GCC
9.	Release of unilateral recoveries effected in the final bill a) towards alleged excess consumption of cement (OPC) b) Towards alleged excess consumption of cement (SRC) c) Towards alleged excess consumption of steel d) Towards alleged excess consumption of MS Plates	2.1.3, 2.1.4(a), (b) 3.1.2(b), clause 7.8 of IS 2911 (Part I/Sec.2)-1979 (IS Code)
10.	Interest @ 18% p.a. From 1.07.2004 to 31.10.2007	655 of GCC

The learned Arbitrator has considered the factual matters and various clauses found in the General Conditions of the Contract and allowed the claim in part and not in entirety, and rejected the claim with respect to

interest. Against which, these Original Petitions have been filed.

3. Though other grounds have been raised in the Original Petitions, one of the main ground canvassed before this Court during submissions that, the learned Arbitrator has not assigned any reasons while allowing the claim of claimant. In other words, it is the contention of learned counsel appearing for Railways is that though several grounds have been raised, the main contention would be only with regard to non-reasoning, while allowing the claims by the learned Arbitrator.

4. The learned counsel appearing for 1st respondent would submit that learned Arbitrator had considered entire contracts and facts placed before it and gave a valid reason for allowing the claims and also negatived the part of the claim. Hence, he prayed for dismissal of Original Petitions.

5. As pointed out by the learned counsel, the dispute is only with regard to difference of rates in materials while concluding the contract. Though the period of contract was for the period of 15 months, the work was completed only on 30.06.2004. Several extensions also granted by the Petitioner Railways. Though the said extensions were given on the

condition that no extra amount would be claimed, it is submitted that it would fall within the excepted matters. Learned Arbitrator took note of various factual aspects and interpreted the contract in other aspects, and found that the delay was attributed on the Railways and allowed part of claim. The claim has not been entirely allowed, and besides, learned Arbitrator has rejected the claim with regard to interest in view of specific clause prohibiting payment of interest in General conditions of Contract. On perusal of entire award, learned Arbitrator in fact has gone through every clause, on which reliance was placed by the respondent to claim that the matter falls within the excepted matters and given a reasoning after analysing the factual matters and evidence in this regard. Therefore, it is the domain of learned Arbitrator, taking note of the factual aspects found in the particular dispute, this Court exercising the jurisdiction under Sec.34 of the Arbitration and Conciliation Act cannot re-appreciate the evidence already appreciated and accepted and part of evidence rejected by the learned Arbitrator. When the learned Arbitrator has also considered various clauses and decided all the issues and found that the claim raised would not fall within the excepted matters and there is no scope to re-appreciate the evidence, this Court is of the view that there is no reason for re-appreciating the evidence and also on factual aspects. Taking note of the fact that the learned Arbitrator has given

sufficient reasons for every claim and concluded his award, it cannot be said that there was no reasoning assigned by the learned Arbitrator. Such submissions of learned counsel, on perusal of entire arbitral award is nothing, but futile exercise only in order to drag on the proceedings on the pretext of filing the Original Petitions to challenge the well-reasoned arbitral award. Hence, I do not find any of the ground contemplated under Sec.34 of the Act is made out to interfere with the well-reasoned award passed by the learned Arbitrator. In such view of the matter, both Original Petitions are liable to be dismissed. Accordingly, these Original Petitions are dismissed. No costs.

Sd./-N.S.K.J
16.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.