



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 14th DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

Arb.Appln.No.167 of 2021

In the matter of Section 9 of
Arbitration and Conciliation Act,
1996

And

In the matter of Contract Agreement
No.31 of 2014 dated 24.10.2014.

Kamarajar Port Ltd,
3rd Floor, Jawahar Building,
17, Rajaji Salai,
Chennai 600 001.

... Applicant

-Versus-

G A Projects Private Limited,
No.3, K.H.Road, Ennore,
Chennai 600 057.

... Respondent

Arbitration Application praying that this Hon'ble Court be pleased
to appoint a Subject Matter Expert (SME)/Independent Engineer to
ascertain the condition of the subject Road, assess the damage caused to the
road and also submit an estimate of the rectification of the road required and
expenses thereof which report may be submitted before the Arbitral
Tribunal, within a time limit stipulated by this Honble court.



This Arbitration Application coming on this day before this court for hearing through video conferencing in the presence of Mr. Manoj Menon for M/s Menon, Karthik, Mukundan and Neelakantan, Advocates for the Applicant herein, and Mr. S.R. Rajagopal, Senior Counsel for M/s Tanya Kapoor, advocates for the respondent herein and upon reading the Judges Summons and the affidavit of V. Krishnasamy and memo dated 12.08.2021 filed herein and this court is inclined to appoint an expert in the field from the Department of Civil Engineering, I.I.T., Madras to inspect the road and **the court made the following order:-**

This application has been filed for appointment of Subject Matter Expert/Independent Engineer to ascertain the condition of the subject road and also submit an estimate of the rectification of the road required and expenses thereof.

2. It is submitted that the respondent was awarded the work pertaining to the construction of a two lane concrete road connecting existing main gate and west gate road. It is an undisputed fact that the award passed earlier was set aside by this court and the same was confirmed by Division Bench in O.S.A. No. 115 of 2020. It is also submitted that fresh proceedings have been commenced vide notice dated 17.07.2021 by the applicant. This application has been filed seeking for



3. Apprehension expressed by the respondent mainly on the one

fold that if an expert is appointed, the applicant would increase the value of counter claim, other than claim already preferred, which was the subject matter of the award subsequently set aside by this Court. In such view of the matter, this Court is of the view that such apprehension has no basis, since the applicant has already quantified his counter claim in the earlier proceedings and in the present proceedings, they cannot enhance the same by using this application. The applicant mainly intended to get the expert opinion in respect of the condition of the road. It is emphasized that an expert to be appointed immediately prior to the monsoon to assess the condition of the road. Such contention has some force. Therefore, this Court is of the view that mere appointing an expert and filing a report would not prejudice the other side also, since the counter claim is already quantified and it cannot exceed in the present claim.

4. In such view of the matter, this Court is inclined to appoint an expert in the field from the Department of Civil Engineering, I.I.T., Madras to inspect the road and the Department of Civil Engineering is directed to nominate requisite number of experts to exercise the direction of this court and file a report. The applicant shall pay necessary fees as required by the I.I.T., Madras for deputing their Engineers. The Expert nominated by I.I.T.,



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5. With the above observation, this Arbitration Application is closed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
14th DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (Comm. Cases)
//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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05.10.2021

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Arb.Appln.No.167 of 2021

ORDER

DATED : 14.09.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 07.10.2021

APPROVED ON: 13.10.2021

Copy to:-

Department of Civil Engineering,
I.I.T., Madras Campus,
Sardar Patel Road,
Chennai – 600 036.



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Arb. Appln. No.167 of 2021

Kamarajar Port Ltd.,
3rd Floor, Jawahar Building,
17, Rajaji Salai,
Chennai-600 001.

... Petitioner

Vs.

G.A. Projects Private Limited,
No.3, K.H. Road, Ennore,
Chennai-600 057.

... Respondent

Prayer: Arbitration Application is filed under Order XIV Rule 8 read with Section 9 of the Arbitration and Conciliation Act, 1996, praying to appoint a Subject Matter Expert (SME)/Independent Engineer to ascertain the condition of the subject Road, assess the damage caused to the road and also submit an estimate of the rectification of the road required and expenses thereof which report may be submitted before the Arbitral Tribunal within a time stipulated by this Hon'ble Court.

For Petitioner : Mr. Manoj Menon for
M/s. Menon

For Respondent : Mr. S.R.Rajagopal for
M/s. Tanya Kapoor

**ORDER**

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(This case has been heard through video conference)

This application has been filed for appointment of Subject Matter Expert/Independent Engineer to ascertain the condition of the subject road and also submit an estimate of the rectification of the road required and expenses thereof.

2. It is submitted that the respondent was awarded the work pertaining to the construction of a two lane concrete road connecting existing main gate and west gate road. It is an undisputed fact that the award passed earlier was set aside by this court and the same was confirmed by Division Bench in O.S.A. No. 115 of 2020. It is also submitted that fresh proceedings have been commenced vide notice dated 17.07.2021 by the applicant. This application has been filed seeking for appointment of Subject Matter Expert/Independent Engineer.

3. Apprehension expressed by the respondent mainly on the one fold that if an expert is appointed, the applicant would increase the value of counter claim, other than claim already preferred, which was the subject matter of the award subsequently set aside by this Court. In such view of the matter, this Court is of the view that such apprehension has no basis, since the applicant has already quantified his counter claim in the earlier



proceedings and in the present proceedings, they cannot enhance the same by using this application. The applicant mainly intended to get the expert opinion in respect of the condition of the road. It is emphasized that an expert to be appointed immediately prior to the monsoon to assess the condition of the road. Such contention has some force. Therefore, this Court is of the view that mere appointing an expert and filing a report would not prejudice the other side also, since the counter claim is already quantified and it cannot exceed in the present claim.

4. In such view of the matter, this Court is inclined to appoint an expert in the field from the Department of Civil Engineering, I.I.T., Madras to inspect the road and the Department of Civil Engineering is directed to nominate requisite number of experts to exercise the direction of this court and file a report. The applicant shall pay necessary fees as required by the I.I.T., Madras for deputing their Engineers. The Expert nominated by I.I.T., Madras shall issue notice to both sides before inspection.

5. With the above observation, this Arbitration Application is closed.

Sd./-N.S.K.J.
14.09.2021

//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.