



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2021

PRONOUNCED ON : 01.11.2021

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CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 3012 of 2017

M/s. Ganon Dunkerley & Co.

A company incorporated under the Companies Act IVV 1913,
No.8-2-262/8, Road No.1, Banjara hills,
Hyderabad - 500 034.

...Appellant/ Respondent No.1

Vs

1.The Airport Authority of India, (International Airport
Division),

Represented by Assistant General Manager, Engg. (c), AAI,
Chennai - 600 027. .. Respondent/ Petitioner

Dr. J.Purushotham (Died) (*)

H.No.8-3-1065, Plot No.12,

Srinagar Colony,

Hyderabad - 500873.

..Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 37 of
the Arbitration and Conciliation Act, 1996 against the
Judgment and Order dated 23/05/2017 passed in Arbitration
Original Petition No.3 of 2002, on the file of the Principal
District Judge, Chengalpattu.

For Appellant

: Mr.C. Manohar Gupta

for M/s. Gupta and Ravi

For Respondents

: Mr.V. Lokesh Kumar for R1

JUDGMENT

This appeal has been filed under Section 37 of the
Arbitration and Conciliation Act challenging the order dated
23.05.2017 passed by the learned Principal District Judge,
Kancheepuram District at Chengalpattu in Arbitration OP No.3
of 2002 under Section 34 of the Arbitration and Conciliation
Act, under which the learned Principal District Judge has set
aside the Arbitral Award dated 17.09.2001 passed in favour of
the Appellant against the first respondent.

2. The Appellant who is a Contractor was the
successful bidder for executing the work of extension and
modification to the Anna International Terminal at Chennai.



A contract dated 28.10.1999 was entered into between the Appellant and the first respondent and under the said contract, the Appellant agreed to execute extension work at Anna International Terminal, Chennai and the total value of the contract was Rs.10,47,42,194/-.

3. The Appellant sought for extension of time to complete the project by their letter dated 15.04.2000 by giving the following reasons :

a) Delay in clearance for Sector - II & III due to movement of air support trolleys along the 29th grid and also occupation of the area along AA 30 to 33 by other agency. There was a change in design for the foundation AA30 to 33.

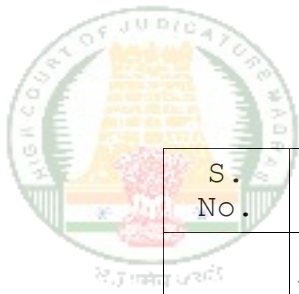
b) Increase in earth work and concrete quantity upto plinth level by more than 100% although the original planned work was done well within the time.

c) We have encountered hard rock in various foundations which was not envisaged in the tender. As blasting was not allowed we had to remove the stone by chiseling.

d) The depth of excavation in Sector II, III, IV & V has also increased from 2.50 mtr to 3.50 mtr. Leading to delay in concrete foundation.

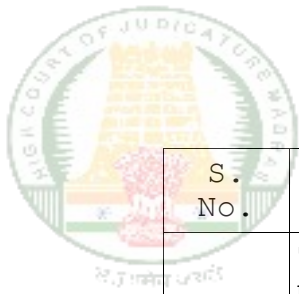
4. The extension sought for by the Appellant through its letter dated 15.04.2000 was rejected by the first respondent by their letter dated 19.04.2000 and in the said reply the first respondent has made it clear that the Appellant will have to complete the work as per the Contract i.e., on or before 13.05.2001. Thereafter, the Appellant invoked the Arbitration clause under the contract by their letter dated 20.07.2000 to the Chief Engineer and the Arbitral Tribunal was constituted in terms of the arbitration agreement. Before the Arbitral Tribunal, the Appellant made the following claims against the first respondent :-

S. No.	Description	Amount Rs.
1.	Claim No.1	
	a. Amount wrongfully deducted in running bills for using lesser quantity of cement in M20 concrete: 5003.93 cu.m. @ Rs.125.57 cu.m.	6,28,343
	b. Interest on the above amount @ 24% per annum from the respective dates and on the respective amounts as per the running bills	



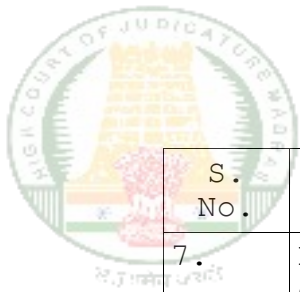
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S. No.	Description	Amount Rs.
	a. Rs.29,477.56 from 31.01.2000 (RA Bill No.1)	
	b. Rs.1,65,134.59 from 29.02.2000 (RA Bill No.2)	
	c. Rs.73,555.14 from 25.03.2000 (RA Bill No.3)	
	d. Rs.1,61,364.99 from 29.04.2000 (RA Bill No.4)	
	e. Rs.1,25,060.00 from 31.05.2000 (RA Bill No.5)	
	f. Rs.37,453.76 from 30.06.2000 (RA Bill No.6)	
	g. Rs.14,209.50 from 31.07.2000 (RA Bill No.7)	
	h. Rs.21,699.76 from 31.08.2000 (RA Bill No.8)	
	c. M 25 concrete 1219.52 cu.m. @ Rs.28.91/cu.m	35,256
	d. Interest on this amount at 24% per annum from the respective dates and on the respective amounts as per the running bills	
	a. Rs.14,507.00 from 30.06.2000 (RA Bill No.6)	
	b. Rs.8,896.18 from 31.07.2000 (RA Bill No.7)	
	c. Rs.11,852.52 from (RA Bill No.8)	
2.	Claim No.2	
	a) The idle charge payable for delay of 270 days @ Rs.45,000/- day as per annexure 'D'	1,21,50,000
	b) Interest on the above amount @ 24% from due date to the actual date of payment	
	c) Declaration that the claimant is eligible for 9 months of extension from 13.05.2001	
3.	Claim No.4	
	a) Profits and overheads on the loss of turnover during the extended period of nine months	



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S. No.	Description	Amount Rs.
	Turnover expected = Rs.55 lakhs per month	
	Turnover for nine months = Rs.495 lakhs	
	Expected profit on turnover including overheads @ 15% i.e., 0.15 X 495	74,25,000
	b) Interest on above amount from due date to the date of payment @ 24% per annum	
	c) Interest @ 24% per annum for nine months on the amounts retained upto 13.05.2000 towards security deposit	
4.	Claim No.3	
	a) The additional cost for concrete payable @ Rs.295 per cu.m. as given in annexure 'F'	
	b) Declaration that the same price would be payable for the balance quantity of concrete	
5.	Claim No.5	
	The additional cost payable for concrete for using transit mixers as given in annexure 'F'	
	a) Total concrete works executed so far 7993 cu.m. @ Rs.527/ cum	42,12,311
	b) Declaration that same extra cost would be paid for all future quantities of concrete	
	c) Interest @ 24% per annum on the above amount from due date till the actual date of payment	
6.	Claim No.6	
	a. The additional cost payable for rebending and rehandling of steel as per Ex-C41. The steel quantity so far consumed 1400 mt. @ Rs.900/mt	12,60,000
	b. Declaration that the same extra cost would be provided in future bills	
	c. Interest on the above amount from due date @ 24% per annum till the actual date of payment	



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S. No.	Description	Amount Rs.
7.	Legal expenses and other incidental charges towards claim preparation	3,00,000 (Tentative)
8.	Fee payable to Honourable Arbitrator	as decided by the learned arbitrator

5. The first respondent filed a counter statement denying its liability and also questioning the jurisdiction of the Arbitral Tribunal to decide on the claims made by the Appellant.

6. The Arbitral Tribunal framed the following issues based on the pleadings of the respective parties :

a) Does the Arbitrator has the jurisdiction to adjudicate the claims?

b) Are the deductions made in the running bills towards less consumption of cement legal and as per the terms of the contract?

c) Is delay caused attributable exclusively to Claimants or Respondents or to both? If so in what proportion?

d) Whether there are any restrictions and constraints in space and approaches which caused additional costs for the Claimant? If so, is the Claimant eligible?

e) Is the Claimant eligible for extra payment for using transit mixers?

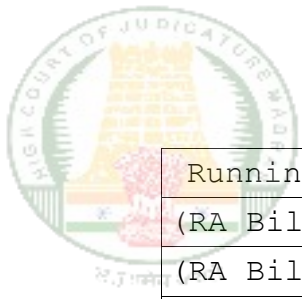
f) Is the Claimant eligible for extra cost incurred due to re-bending of steel?

7. An Arbitral Award dated 17.09.2001 came to be passed by the Arbitral Tribunal in favour of the Appellant against the first respondent in which the following sums were awarded in favour of the Appellant payable by the first respondent :

a) Refund of wrongful deductions made by the first respondent under the running bills raised by the Appellant (claim No.1)

21.10 M 20 Concrete :

Running bills no.	Date of recovery	Amount
(RA Bill No.1)	31.01.2000	29,477.56
(RA Bill No.2)	29.02.2000	1,65,134.59
(RA Bill No.3)	25.03.2000	73,555.40
(RA Bill No.4)	29.04.2000	1,61,364.99
(RA Bill No.5)	31.05.2000	1,25,060.00



Running bills no.	Date of recovery	Amount
(RA Bill No.6)	30.06.2000	37,453.76
(RA Bill No.7)	31.07.2000	14,209.50
(RA Bill No.8)	31.08.2000	21,609.76
	Total	Rs.6,28,343.00

21.2 M 25 Concrete :

Running bill No.	Date of recovery	Amount
(RA Bill No.6)	30.06.2000	14,507.00
(RA Bill No.7)	31.07.2000	8,896.18
(RA Bill No.8)	31.08.2000	11,852.52
	Total	Rs.35,256.00

b) Idling charges (claim No.2) at Rs.25,000/- per day for a period of 155 days totalling to Rs.38,75,000/-

c) Towards additional cost (claim No.3) incurred on account of approach and site restriction due to construction of compound walls at Rs.125/- per cu,m i.e. cubic metre for 2467.42 cu.m executed by the Appellant upto 8th running bill totalling amounting to Rs.3,08,427/-

d) Towards loss of turnover and overheads Rs.10,08,330/-, calculated on the basis that the Appellant would have earned 10% profit and the delay period was taken by the Arbitral Tribunal on the part of the first respondent at 55 days. (claim No.4).

e) Interest was awarded at 18% p.a. on the total Arbitral Award amount from the date of the Arbitral Award.

8. The Arbitral Tribunal rejected the claim for extra rates for quantities to be executed by the Appellant in the extended period of contract and has also rejected the claim made towards interest charges on security deposit that would be retained by the first respondent in the extended period of the contract. The Arbitral Tribunal has also rejected the claim for legal expenses and other incidental charges towards claim preparation as it is not supported by any evidence.

9. Aggrieved by the Arbitral Award dated 17.09.2001 referred to supra, the first respondent filed an application under Section 34 of the Arbitration and Conciliation Act before the learned Principal District Judge, Kancheepuram District at Chenglepet in Arbitration O.P. No.3 of 2002 seeking to set aside the Arbitral Award.

10. By the impugned order dated 23.05.2017, the



learned Principal District Judge, Kancheepuram District at Chenglepattu has set aside the Arbitral Award dated 17.09.2001 passed in favour of the Appellant against the first respondent by giving the following reasons :-

a) Clause 12 of the contract lays down the procedure for extension of time. Infact on reading of Clause 12, it has been specifically mentioned that the time for completion of work shall be extended in the proportion of altered, additional or substitution of work which bears to the original contract work and the certificate of the Engineer in charge shall be conclusive as to such proportion. Over and above the further period to the extent of 25% of the time of such extension shall be allowed to the Contractor. The cost for such additional, altered or substituted work under Clause 12 shall be worked out in accordance with the contract. The observations of the Arbitrator as if there is no procedure laid down in Clause 12 of the Contract was infact incorrect.

b) Clause 25 of the Contract though provides for referring disputes to the Arbitrator during the progress of construction of the work but raising dispute in half way appears to be unjustified.

c) As per Clauses 2 and 12 of the Contract, Engineer in charge has power to extend the period due to the additional, altered or substituted work in terms of the contract. Insofar as the time schedule is concerned depending upon the contingencies such as deviation from the original plans and additional constructions, the Engineer in charge is competent to vary or extend the time stipulated for completing the work. Such question can be opened only on completing the work not in the half way.

d) On reading of Clause 12, it has been specifically mentioned that the time for completion of work shall be extended in the proportion of altered, additional or substituted work which bears to the original contract work and the certificate of the Engineer in charge shall be conclusive as to such proportion. Over and above the further period to the extent of 25% of the time of such extension shall be allowed to the Contractor. The cost for such additional, altered or substituted work under this clause shall be worked out in accordance with the terms mentioned in clause 12.

e) In this case, when the work was in progress, there were some deductions made by the first respondent in the running bills of the Appellant. If really, the Appellant is aggrieved by the deductions made, they can receive the amount subject to the objections over deductions while receiving the final settlement. For each and every stage, an Arbitrator cannot be appointed. For a running bill for a particular month and after some time for another month, the services of the Arbitrator cannot be entertained.

f) The Appellant has committed a mistake in referring the matter to the Arbitrator before completion of the work and hence the claim made by the Appellant is a



premature one. The Appellant did not object earlier to the mix design evolved by Anna university and therefore, the suggested procedure to choose the agency need not be followed.

g) The recovery of running bills towards consumption of cement is correct as the design by Anna University is correct and there is no necessity to refer the same to some other agency.

h) The Appellant projected an overall delay of nine months in handing over the site. The reasons given are increase in quantities below ground level, lack of site clearances and opening required funds during the execution of work not releasing holds in drawings, site constraints due to other agencies not vacating the place and removal of working space by construction of compound wall at the edge of structure. With reference to the delay due to increase in quantities is concerned as already stated in Clause 12 of the Contract, the Engineer in charge is competent to extend the time. The extension of time allowable can be executed by the Engineer in charge only on completion of the work. When the Appellant is entitled to additional amount as well as extension of time seeking extension of time for the additional work is premature.

i) The Arbitral Tribunal has erroneously assessed 105 days as the delay period on the part of the first respondent. It is not known as to how he had assessed the delay to be 105 days on the part of the first respondent when the work is still in progress.

j) The Arbitrator cannot substitute his own ideas in the Award. Additional time can be decided only after completion of additional work involved.

k) The contract date is 28.10.1999. The date of commencement of the work by the Appellant was fixed at 25 days from the date of the contract. Even on 11.01.2000, the Appellant has not submitted Bank guarantees along with security deposit. Similarly, they have not given any labour licence from Regional Labour Commissioner and failed to establish field laboratory. Therefore, the delay is only on the part of the Appellant.

l) In the letter dated 15.04.2000 which is marked as Ex.P16, the Appellant has introduced a new clause as they are proposed to deploy concrete pump and the required rate shall be paid by the first respondent. Thereafter, it appears the Appellant is making so many claims as if the nature of work involves machinery due to non availability of space etc., when the contract is on item wise, unit wise rates.

m) The modus operandi of the Appellant appears that having obtained a huge contract by submitting least bid subsequently making so many demands under various pretexts to get enhanced amount. While obtaining huge civil contract in an operational Airport, the Appellant ought to have anticipated practical difficulties. Even if there is a delay



on the part of the respondent, it can be considered only at the final settlement not in the half way. The width of the building is about 90 metres, it requires deploying of power crane having a boom length of 50 metres. On the other hand, the Appellant deployed power crane having a boom length of 20 meters. For the said default, the first respondent cannot be held liable. The non availability of the area for deploying tower crane and other machineries near the construction site is not the responsibility of the first respondent. In the tender document, nothing has been specifically mentioned about the place on which the mixture, plan and other work site has to be provided to the Appellant. In clause 55(j), it has been specifically mentioned that the contractor has to adjust his work and progress of the work in coordination with other agencies working in the site. Knowing fully well about the existence of the Airport in operation, knowing the difficulties involved, the Appellant has bid and became successful. They have to anticipate such sort of difficulties in executing civil work in an Airport.

n) Though the Arbitrator in para 19.2.0. has come to the conclusion that the work site handed over to the Appellant is acceptable and the other claim is negatived, the Arbitrator has chosen to award cost to set up pump concrete mixture which is quite contrary to the terms and conditions of the Contract.

o) Though the Arbitrator has rejected the claim in issue No.V, he has erroneously passed Award towards idle charges for 270 days at the rate of Rs.45,000/- towards machineries idling due to the delay caused by the first respondent. In that connection, the Appellant claimed Rs.45,000/- per day towards idling charges for 270 days totalling Rs.1,21,50,000/-. However, the Arbitrator awarded Rs.38,75,000/- at the rate of Rs.25,000/- per day for 155 days. Though the Arbitrator has observed that it is not possible and practical to maintain such record in an ongoing project, how he guessed idling charges is not properly explained and is also not supported by reasons.

p) The Arbitrator has also erroneously awarded 15% for column No.IV, on the basis of loss, which is not supported by reasons.

q) The Arbitrator has exceeded the terms of contract and passed the Arbitral award which is not in accordance with the terms and conditions of the Contract between the parties. The Arbitral Award has been passed without giving reasons.

r) The learned Principal District Judge has also referred to various decisions of the Hon'ble Supreme Court as well as High Court in the impugned order while setting aside the Arbitral Award.

11. Heard Mr.C. Manohar Gupta, learned counsel for the Appellant and Mr.V. Lokesh Kumar, learned counsel for the first respondent.



12. The learned counsel for the Appellant drew the attention of this Court to the letter dated 15.04.2000 sent by the Appellant to the first respondent requesting for extension for performance of the Contract by another period of three months due to the reasons stated in the said letter. According to him, only under unavoidable circumstances, the extension for performance of the contract was sought for by the Appellant. He then drew the attention of this Court to the reply dated 19.04.2000 sent by the first respondent rejecting the extension sought for by the Appellant.

13. The learned counsel for the Appellant then drew the attention of this Court to Clause 25 of the Contract dated 28.10.1999 entered into between the Appellant and the first respondent and would submit that as per the said Clause even during the progress of the work, dispute can be referred to Arbitration. He would submit that as seen from the letter dated 14.12.1999 sent by the Appellant to the first respondent, the Appellant was ready to commence the work on 15.12.1999 itself as Boomi Pooja was conducted on that date.

14. The learned counsel for the Appellant then drew the attention of this Court to the Arbitral Award passed in favour of the Appellant and would submit that the Arbitral Tribunal has given sufficient reasons for passing the Arbitral Award in favour of the Appellant. According to him, the first respondent has arbitrarily made deductions in the running bills raised by the Appellant on the first respondent towards less consumption of cement. According to him, only based on the evidence placed on record by the Appellant, the Arbitral Tribunal has given a finding that only due to the delay on the part of the first respondent, the Appellant had suffered losses. The learned counsel for the Appellant drew the attention of this Court to various claims awarded by the Arbitral Tribunal in favour of the Appellant under the Arbitral Award and would submit that only in accordance with the contract, the said claims were awarded in favour of the Appellant.

15. In support of his submissions learned counsel for the Appellant relied upon the following authorities;

- a) M/s. Arosan Enterprises Ltd. Vs. Union of India and another reported in 1999 (9) SCC 499;
- b) M/s. A.T. Brij Paul Singh and others Vs. State of Gujarat reported in (1984) 4 SCC 59;
- c) M/s. J.G. Engineers Pvt Ltd. Vs. Union of India and another reported in 2011-4- L.W.1;
- d) Ravindra Kumar Gupta and Company Vs. Union of India reported in 2010 (1) SCC 409;

16. Per contra, the learned counsel for the first respondent would submit that the Arbitral Tribunal has gone



beyond the scope of the contract. According to him, the extension of time for a period of three months sought for by the Appellant during the progress of the work i.e. four months from the commencement of work was rightly rejected by the first respondent as it was premature. According to him, only as a pre-emptive action, the Appellant invoked the Arbitration clause, even during the progress of the work and continued with the work.

17. He would submit that the work was completed by the Appellant within the stipulated date of completion and there were no demands on either side after completion of work.

18. The learned counsel for the first respondent would submit that the claims made by the Appellant before the Arbitral Tribunal is a premature one and outside the scope of the contract. He drew the attention of this Court to the Arbitral Award and would submit that Arbitral Tribunal failed to discuss the points put forth by the first respondent and under the Arbitral Award, the Arbitrator has erroneously held that the first respondent has not been able to establish which claims are outside the scope of the Contract.

19. The learned counsel for the first respondent drew the attention of this Court to the Clause 12 of the Contract entered into between the Appellant and the first respondent and would submit that the Engineer in charge is empowered to make alterations to original specifications which may be necessary during the progress of the work and the first respondent (contractor) shall do the work in accordance with the instructions. According to him, as per Clause 12, the certificate of Engineer in charge shall be conclusive as to the alterations / commissions / substitutions in the work.

20. He would also point out from the contract that over and above the further period to the extent of 25% of the time of such extension shall be allowed to the contractor.

21. The learned counsel for the first respondent then drew the attention of this Court to Clause 25 of the Contract and would submit that that the Arbitrator misconstrued his powers under Clause 25 and failed to note that the very beginning of Clause 25 begins with an inbuilt proviso "Except where otherwise provided in the contract....". According to him, the jurisdiction of the Arbitrator circumscribes within the four corners of the contract and not a blanket power to grant any relief outside the scope of the contract.

22. The learned counsel for the first respondent would further submit that as per the terms of the contract, any extension has to be sought for as per the specified



format, but the Appellant did not seek extension of time as per the specified format.

23. The learned counsel for the first respondent would submit that arbitrarily and perversely to the utter shock of the first respondent, the Arbitral Award came to be passed against them. He then drew the attention of this Court to the impugned order passed under Section 34 of the Arbitration and Conciliation Act by the learned Principal District Judge under which the Arbitral award was set aside and would submit that the learned Principal District Judge has rightly set aside the Arbitral Award as the said Award has been passed arbitrarily and beyond the scope of the Contract entered into between the Appellant and the first respondent. In support of his submissions, the learned counsel for the first respondent drew the attention of this Court to the following authorities :

a. Mithra Guha Builders (India) Company vs. ONGC reported in 2020 3 CTC 330

b. Gammon India Ltd. Vs. National Highways Authority of India reported in 2020 0 Supreme (Del) 664

24. Referring to the aforementioned decisions, the learned counsel for the first respondent would submit that the Arbitral Tribunal has passed an Arbitral Award contrary to the terms of the contract and beyond the scope of the contract.

Discussion :

25. Admittedly in the case on hand, Arbitration proceedings was initiated by the Appellant within eight months from the date of the Contract. The period of the Contract is for 18 months. The Appellant has sought for extension by another period of three months within the first eight months from the date of the Contract. Even according to the Appellant, they commenced the work by performing Boomi Pooja only on 15.12.1999 though the contract is dated 14.11.1999.

26. The request for extension sought for by the Appellant under its letter dated 15.04.2000 was rejected by the first respondent on 19.04.2000. As seen from the request for extension, the Appellant has sought for extension by another period of three months at the initial stage of the commencement of the work itself. This Court does not find any arbitrariness on the part of the first respondent in the rejection of the extension request made by the Appellant.

27. No prudent and diligent employer will grant extension even before the full fledged commencement of work as per the contract takes place. In the case on hand, the letter dated 15.04.2000 sent by the Appellant to the first respondent seeking extension will clearly reveal that the Appellant has not commenced the work in full swing. The



contract is dated 28.10.1999, whereas the request for extension even before full fledged commencement of work by the Appellant was made on 15.04.2000. This will clearly reveal that there was no proper progress of work by the Appellant in the initial stages after the contract date.

28. As observed earlier, this Court does not find any infirmity in the rejection of the extension sought for by the Appellant under the first respondent's reply letter dated 19.04.2000.

29. As rightly contended by the learned counsel for the first respondent, there cannot be any initiation of Arbitration for every claim during the progress of the work. The first respondent did not terminate the contract of the Appellant. Even before termination of the contract, at the early stage of the commencement of the work itself, the Appellant has initiated Arbitration immediately after the rejection of the request for extension by the first respondent on 19.04.2000. Infact, the Appellant has chosen to continue with the work as per the contract and has completed the work in terms of the contract and has also handed over the project site after completion to the first respondent. Therefore, as rightly observed by the learned Principal District Judge under the impugned order, the Arbitral claim made by the Appellant against the first respondent is a premature one. No demand for any additional payment apart from the contractual payment has been made by the Appellant after completion of the work and handing over the project site to the first respondent.

30. The learned Principal District Judge after the impugned order has rightly held that there cannot be a separate arbitration for each and every claim during the progress of the work. The Arbitration has been initiated by the Appellant prematurely even before the period of the contract and even before any termination by the first respondent. The contract is valid for eighteen months from 14.11.1999 whereas, the Arbitral claim was initiated by the Appellant even before the eighteen month period and even before any termination of the contract by the first respondent.

31. Under Clause 12 of the contract, the Engineer in charge is empowered to make alterations / commissions / substitutions for the original specifications, drawing, designs etc., that may appear necessary during the progress of work and the Contractor shall do the work in accordance with the instructions. Further time for completion of work shall be extended if the proportion of altered, additional or substituted work bears to the original contract work and the certificate of Engineer in charge shall be conclusive as to



such proportion. It is clear from Clause 12 of the Contract, that Engineer in charge is a final authority to grant extension or not to the Appellant during the progress of the work. The first respondent having not terminated the contract, the rejection of the extension request made by the first respondent on 19.04.2000 is final and binding on the Appellant and there is no question of initiating arbitration during the progress of the work. The reasons given by the first respondent for rejecting the request for extension on 19.04.2000 cannot also be considered to be unreasonable as admittedly the work was not in full swing on that date. Further, the extension was sought by the Appellant at the beginning stages itself. The decision relied upon by the learned counsel for the first respondent in the case of M/s. Mithra Guha Builders (India Company) Vs. Oil and Natural Gas Corporation Ltd. reported in 2020 (3) SCC 322 squarely applies to the facts of this case also as even in that case the Hon'ble Supreme Court held that once parties have decided that certain matters are to be decided by Superintending Engineer and his decision would be final, the same cannot be the subject matter of Arbitration. In the case on hand also, the Superintending Engineer has given valid reasons for rejecting the request for extension by another period of three months on 19.04.2000 which reads as follows;

Your revised program showing the completion date for the above mentioned work extended by three months is not acceptable to Airports Authority of India. You are required to complete the work by 13/5/2001 as stipulated in the above agreement.

Regarding deployment of concrete pump, your request for extra payment is not admissible as per terms and conditions of contract. This aspect has already been made clear to you vide our following letters.

1) This office Lr.No.AAI/MAP/PD.II/1203/F-2000/719 dtd 14.2.2000 addressed to you

2) This office Lr.No.AAI/MAP/PD.II/1203/F-2000/1663 dtd 20.3.2000 addressed to you

3) This office Lr. No.AAI/MAP/PD.II/1203/F-2000/2394 dtd 11.4.2000 addressed to you

The revised program enclosed with your letter under reference may please be got modified for completion by 13/5/2000 and resubmitted at the earliest.

32. Clause 25 of the Contract also makes it clear that the jurisdiction of the Arbitrator is circumscribed within the four corners of the contract. The Arbitral Tribunal cannot pass any Arbitral Award outside the scope of the contract. In the case on hand as rightly observed by the learned Principal District Judge under the impugned order, the



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Arbitrator has passed the Arbitral Award beyond the scope of the contract. When admittedly, the Appellant after making the claim has continued with the work as per the contract and completed the same and handed over the same to the first respondent, the question of passing an Arbitral Award in favour of the Appellant will not arise.

33. The reasons given by the learned Principal District Judge for setting aside the Arbitral Award referred to supra are sound and justifiable which necessarily calls for interference of the Arbitral Award under Section 34 of the Arbitration and Conciliation Act. The Arbitral Award has shocked the conscience of this Court as the claims made by the Appellant before the Arbitral Tribunal have been made prematurely at the initial stage of the commencement of the work itself under the contract. The Appellant has also completed the work thereafter without any delay. The assessment of delay on the part of the first respondent by the Arbitral Tribunal at 155 days has been made arbitrarily shocking the conscience of this Court. None of the reasons given by the Arbitral Tribunal for passing the Arbitral Award in favour of the Appellant is justifiable but the said reasons only shocks the conscience of this Court. This Court is surprised and shocked as to how when the Arbitral claim was made within the first few months of the contract that delay of 155 days on the part of the first respondent will arise. The Arbitral Tribunal has gone beyond the scope of the contract by passing the Arbitral Award in favour of the Appellant. Having passed the Arbitral Award beyond the scope of the contract, the Arbitral Award can be interfered with under Section 34 of the Arbitration and Conciliation Act. The learned Principal District Judge has rightly interfered with the Arbitral Award and has rightly set aside the Arbitral Award.

34. It is well settled law as laid down by the following oft-quoted decisions of the Hon'ble Supreme Court that the Arbitral Tribunal cannot pass any Arbitral award beyond the scope of the contract:

a) Associate Builders V. Delhi Development Authority reported in (2015) 3 SCC 49

b) Ssangyong Engineering and Construction Company Limited vs. National Highways Authority Limited (NHAI) reported in (2019) 15 SCC 131.

35. If the Arbitral Award is patently perverse and has been passed beyond the scope of the contract shocking the conscience of this Court, the Court exercising power under Section 34 of the Arbitration and Conciliation Act has to necessarily set aside the Arbitral Award. The case on hand is one where the Court will have to necessarily set aside the Arbitral Award and the learned Principal District Judge under



the impugned order has rightly interfered with the Arbitral Award passed in favour of the Appellant by setting aside the same. The Judgments relied upon by the learned counsel for the Appellant referred to supra has no bearing to the facts of the instant case as those Judgments did not deal with the situation where an Arbitral claim has been made prematurely and even after the claim the Appellant has continued with the work and completed the same. After the completion of work also, the Appellant did not make any further claims against the first respondent. In all the Judgments relied upon by the learned counsel for the Appellant referred to supra were cases where there was termination of contract. But in the case on hand, there was no termination of contract by the first respondent and even after the Arbitral claim, the Appellant has chosen to complete the work without finding fault against the first respondent thereafter.

36. Though in certain cases, premature legal action is permissible, but however the validity of such a premature legal action depends on the facts and circumstances of each case. The Hon'ble Supreme Court in the case of VithalBhai Pvt. Ltd. Vs. Union Bank of India reported in (2005) 4 SCC 315 held that a Court shall not exercise its discretion in favour of decreeing a premature suit in the following cases

a) When there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or

before a particular date or the occurrence of a particular event;

b) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose;

c) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction, and

d) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency.

37) In the case on hand, the action of the Appellant in initiating an Arbitral claim within the first eight months of the beginning of the Contract and even after making the claim continuing with the work without demur and completing the same without making any further claims will clearly prove that the action of the Appellant will fall within clause (c) referred to supra as the presentation of the Arbitral claim by the Appellant itself is patently void and its invalidity is



also incurable as the Appellant even after initiating the Arbitral claim during the period of the contract has chosen to go ahead with the contract by completing the same and handing over the project to the first respondent. Therefore, this Court is of the considered view that the Arbitral Tribunal has not applied its mind judiciously while entertaining the premature Arbitral claim made by the Appellant.

38. This Court does not find any infirmity in the findings of the learned Principal District Judge under the impugned order. Therefore, there is no merit in this appeal and accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vsi2

To

The Principal District Judge,
Kancheepuram District at Chengalpattu.

Copy To:

The Section Officer,
V.R Section, High Court,
Madras.

+1cc to M/s.Gupta & Ravi, Advocate, S.R.No.56391

C.M.A.No. 3012 of 2017

MG (CO)
SB (25/11/2021)