IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No. 1039 of 2019

M/s. First Post,
Rep.by its Partner, Mr.V.Ramesh Kumar Reddy,
S/o. Late. V.Ramaswamy Reddy,
Kakani Towers,
15, Khader Nawazkhan Road,
Chennai – 600 006. ... Petitioner

-Vs-

1. Mrs. R. Vijayambal,
W/o. (Late) P.Rajendran,
No.A1, Sundeepkala Apartments,
2/534, 535, Sundeep Avenue 2nd Main Road,
Chinna Neelankarai,
Chennai – 600 041.

2. Mr. R. Venkata Subramaniam,
S/o. (Late) P.Rajendran,
No.A1, Sundeepkala Apartments,
2/534, 535, Sundeep Avenue 2nd Main Road,
Chinna Neelankarai,
Chennai – 600 041.

3. Mr. R. Srinivasan,
S/o. (Late) P.Rajendran,
No.A1, Sundeepkala Apartments,
2/534, 535, Sundeep Avenue 2nd Main Road,
Chinna Neelankarai,
Chennai – 600 041.

4. Mr. R. Ananda Kumar,
S/o. (Late) P.Rajendran,
No.A1, Sundeepkala Apartments,

2/534, 535, Sundeep Avenue 2nd Main Road,
Chinna Neelankarai,
Chennai – 600 041. ... Respondents

Original Petition praying that this Hon'ble Court be pleased to set aside the Award dated 07/03/2019 passed by the Sole Arbitrator, Honourable Mr. Justice G.M. Akbar Ali (Retired) directing the Respondents to pay a sum of Rs.3,51,91,767/- (Rupees Three Crore Fifty One Lakh Ninety One Thousand Seven Hundred and Sixty Seven only) with interest at the rate of 18% p.a. from the date of passing the award till the date of payment, to the petitioner and allow all the claims of the Petitioner as prayed for before the Arbitral Tribunal.

This Original Petition coming on this day before this court for hearing in the presence of Mr.T.R.Rajagopal, Senior Counsel for M/s.Ganesh & Ganesh, Advocates for the petitioner herein and Mr.V.Raghavachari for M/s.K.Chozhan, Advocates for the respondents herein and upon reading the petition and the award dated 07.03.2019 filed herein and this Court having observed that the net payout to the petitioner is partly towards the amounts advanced by the petitioner to the respondents in terms of the JDA and partly towards cost of construction after setting off amounts realized by the petitioner from the sale of three plots, and as regards refund of advances, the Arbitral Tribunal took into consideration the fact that the JDA did not provide for the payment of interest thereon, with regard to construction cost and ancillary expenses, an adjudication by the Arbitral Tribunal was necessary before the amounts payable in such regard could be determined and in those circumstances, the Arbitral Tribunal declined to grant *pendente lite* interest, such conclusion cannot be characterised as patently illegal or contrary to public policy so as to warrant interference. While on this issue, it should be noticed that post-Award interest at 18% per annum was granted, the petitioner has failed to make out a case to interfere with the Award, **it is ordered as follows :-**

That the Arbitration O.P.No. 1039 of 2019, be and is hereby dismissed.

2. That there shall be no order as to costs.

3. That the A.No. 9625 of 2019 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 12TH DAY OF JANUARY 2022.

Sd/-
ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED
27.01.2022

O.P.No. 1039 of 2019

ORDER :-

DATED : 12.01.2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL:10.02.2022

APPROVED ON :11.02.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 12.01.2022

C O R A M :

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

O.P.No.1039 of 2019
and
A.No.9625 of 2019

M/s.First Post,
Rep. by its Partner Mr.V.Ramesh Kumar Reddy,
Kakani Towers,
No.15, Khader Nawazkhan Road,
Chennai – 600 006. ... Petitioner

Vs

1.Mrs.R.Vijayambal
2.Mr.R.Venkata Subramaniam
3.Mr.R.Srinivasan
4.Mr.R.Ananda Kumar ... Respondents

PRAYER : This Petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 read with Order XLIII Rule 7 of Original Side Rules praying to set aside the Award dated 07.03.2019 passed by the Sole Arbitrator, Mr. Justice G.M.Akbar Ali (Retired) directing the Respondents to pay a sum of Rs.3,51,91,767/- (Rupees Three Crore Fifty One Lakhs Ninety one thousands seven hundred and sixty seven only) with interest at the rate of 18% p.a. from the date of passing the award till the date of payment, to the Petitioner and allow all the claims of the Petitioner.

For Petitioner : Mr.T.R.Rajagopal, Senior Counsel
for M/s.Ganesh & Ganesh

For Respondent : Mr.V.Raghavachari
for M/s.K.Chozhan

ORDER

The dispute is between a developer, the Petitioner herein, and the land owners, the Respondents herein. The Petitioner was also the claimant before the Arbitral Tribunal and the Respondents herein were the respondents therein. An Arbitral Award dated 07.03.2019(the Award) is challenged.

2. The Petitioner is a registered partnership firm, which is represented by one of its partners, Mr.V.Ramesh Kumar Reddy. The Petitioner and Respondents entered into a Joint Development Agreement dated 06.05.2015(the JDA) in relation to the development of lands situated in Old R.S.No.1 and New R.S.No.1/1, bearing Survey Nos.1/73, 1/74 at Injambakkam Village, Sholinganallur Taluk, Kancheepuram District of an aggregate extent of about 4.19 acres. As per the JDA, the developer had agreed to develop 20 plots and construct villas thereon. The sharing ratio under the JDA was 35% to the land owners and 65% to the developer. As a result, 7 out of the 20 plots were to be developed and handed over to the land owners and 13 plots were to be developed and retained or sold by the

developer. Each villa was to have a built up area of about 4500 sq.ft. Such villa was envisaged to be a ground plus one construction. The entire construction cost was to be borne by the developer. The JDA envisaged that the developer would pay monetary consideration of Rs.4,20,00,000/- in the manner specified in Clause 7 thereof. Out of the sums specified in Clause 7, the developer paid a sum of Rs.20,00,000/- on 14.08.2014 and Rs.1,00,00,000/- on the date of execution of the JDA. A further sum of Rs.2,00,00,000/- in total was paid under multiple cheques between 18.05.2015 and 05.04.2016. Further payments of about Rs.4.85 crores also appear to have been made. Thus, in total, it appears that a sum of Rs.8,05,00,000/- was paid by the developer to the land owners.

3. In connection with the implementation of the JDA, the land owners were required to and executed two irrevocable Powers of Attorney on 07.05.2015, which were registered as Document Nos.90 of 2015 and 3554 of 2015 at the SRO, Neelankarai. Pursuant to the JDA, the developer undertook development and construction work. According to the developer, three villas on Plot Nos.8,10 and 11 were fully constructed. As regards Plot Nos.1 and 20, the construction was midway. Out of the 13 plots, which were allotted to the share of the developer, three plots were sold by making use of the Powers of Attorney.

4. By notice dated 23.07.2016, the land owners informed the developer that they had decided to cancel the Power of Attorney Deed bearing Document Nos.90 of 2015. By a separate notice, the developer was informed that the Power of Attorney Deed bearing Document No.3554 of 2015 was also being cancelled. Subsequently, it transpired that Deeds of Cancellation dated 27.07.2016 were registered in the jurisdictional SRO for cancellation of both the Powers of Attorney. After issuing a reply notice dated 10.08.2016 to the effect that the above mentioned Powers of Attorney cannot be cancelled since they are coupled with interest, the developer invoked the arbitration clause in the JDA. Shortly thereafter, by notice dated 27.08.2016, the land owners cancelled the JDA. After indicating the payments made by the developer to the land owners by communication dated 21.10.2016, the developer also indicated that it is accepting the cancellation of the JDA.

5. In these circumstances, a dispute arose between the parties. The developer, as claimant, submitted a statement of claim claiming: a sum of Rs.9,81,77,276 representing the net receivable by the Petitioner towards project cost, expenses, etc. and Rs.85,00,000/- with interest thereon at 18% per annum; a sum of Rs.4,55,00,000/- towards loss of opportunity; a sum of

Rs.81,94,510/- towards provision of common amenities; a sum of Rs. 1

crore towards damages for mental agony; costs of arbitration; and interest on all claims, except claim no.1 at 18% per annum. The Respondents filed a statement of defence seeking rejection of the above mentioned claims. Upon considering the pleadings, the Arbitral Tribunal framed 11 issues. Both parties adduced documentary evidence: the Petitioner/Claimant exhibited 29 documents as Exhibits C1 to C29 and the Respondents exhibited 1 document as Exhibit R1. The first two issues related to whether the cancellation of the JDA was mutual. Issues were also framed in respect of each of the monetary claims of the developer/Petitioner. Eventually, after concluding that the cancellation of the JDA was by mutual consent, the Arbitral Tribunal awarded a sum of Rs.3,51,91,767/- towards Claim Nos.2,4,5 and 6 collectively. The said sum was arrived at by deducting the sale consideration received by the developer of Rs.7,07,00,000/- from the following: the total payments made by the developer to the land owners, the admitted cost of construction, cost of external development and legal expenses, which aggregated to a sum of Rs.10,58,91,767/-. Thus, the Arbitral Tribunal concluded that the net amount payable by the Respondents to the Petitioner is a sum of Rs.3,51,91,767/-. This sum was awarded with interest at the rate of 18% per annum from the date of Award till the date of payment.

6. The Petitioner assails the above Award on multiple grounds. The first contention of the Petitioner is that the conclusion of the Arbitral Tribunal that the JDA was cancelled by mutual consent is patently erroneous. By adverting to the communication dated 21.10.2016 from the Petitioner to the Respondents, the Petitioner contended that it was stated therein as under:

> "We reserve all our rights and nothing contained herein above may be read to constitute a waiver of any of our rights or claims"

7. According to the Petitioner, the Arbitral Tribunal disregarded the above communication. In addition, the Petitioner contended that the Arbitral Tribunal failed to take note of the communication dated 27.08.2016 from the Respondents to the effect that the Respondents are not parties to the JDA. In effect, the contention of the Petitioner is that the Arbitral Tribunal disregarded communications such as the notice dated 10.08.2016 by which the Petitioner invoked the arbitration clause and also informed the Respondents that Clause 13 read with Clause 45 of the JDA makes it clear that neither the JDA nor the Powers of Attorney can be terminated or cancelled. Thus, the Petitioner contended that the Award is liable to be

interfered with because vital evidence in the form of multiple communications was disregarded.

8. The next contention of the Petitioner is that the conclusion of the Arbitral Tribunal on Issue No.7 is erroneous because the Arbitral Tribunal did not provide any reasons to support its conclusion that the Petitioner is not entitled to a claim of loss of profit or opportunity. On this issue, the Petitioner relied on Section 205 of the Indian Contract Act, 1872(the Contract Act), which provides for compensation by the principal if a contract of agency is revoked without sufficient cause. With regard to the claim for amenities, the Petitioner contended that the Arbitral Tribunal failed to appreciate that the developer was under an obligation to provide common amenities to persons who purchase plots from the developer. According to the Petitioner, the Arbitral Tribunal entered an erroneous finding on this issue on the misconception that the developer was only selling land and, therefore, was not under an obligation to provide common amenities. The Petitioner contended that interest should have been awarded at least during the *pendente lite* period and that the rejection of the interest claim for such period is perverse. On this issue, the Petitioner referred to and relied upon the following judgments:

(i) *Secretary, Irrigation Department, Government of Orissa and Others v. G.C.Roy* (1992) 1 SCC 508 **(G.C.Roy)**, wherein, at paragraphs 43 to 46, the Hon'ble Supreme Court held that the Arbitral Tribunal is entitled to award interest *pendente lite* unless the contract prohibits the grant of such interest.

(ii) *Raveechee and Company v. Union of India* (2018) 7 SCC 664, wherein, at paragraph 10, the Hon'ble Supreme Court held that the liability for interest *pendente lite* does not arise from a term of the contract but on the basis that the aggrieved party has not received its dues due to the arbitral proceeding being pending.

(iii) *J.K.Fenner (India) Limited. v. Neyveli Lignite Corporation and others* (2020) 5 CTC 579, wherein, this Court followed the principles laid down in the above judgments.

9. With regard to the claim for construction cost, the Petitioner contended that the refusal of the Arbitral Tribunal to rely on the Chartered Accountant's certificate is completely erroneous. According to the

Petitioner, the Chartered Accountant's certificate was prepared on the basis of the bills and vouchers. The Annexure to the certificate listed the bills and vouchers which formed the basis for such certificate. In fact, the Petitioner contended that the project cost was divided under four categories, namely, construction cost of the villas, external development, legal, and overhead charges. The date of payment, cheque numbers and date, etc. were included in the Annexure. The Petitioner also contended that the Arbitral Tribunal erred in concluding that the Petitioner had not provided the details of its construction costs. By referring to paragraphs 20 to 24 of the statement of claim, the Petitioner contended that the construction cost details were set out therein. The Petitioner also pointed out that a demand notice was issued to the Respondents on 06.01.2017 and that the Chartered Accountant's certificate with an Annexure containing details of all payments were enclosed with the said notice. Moreover, it was pointed out that the Petitioner provided copies of all supporting invoices, bills and vouchers along with its notice dated 03.06.2017. In these facts and circumstances, the Petitioner contended that the rejection of the certificate and the award of construction cost on the basis of P.W.D. rates is perverse.

10. These contentions were denied by the Respondents. With regard to the finding of the Arbitral Tribunal that the JDA was cancelled by mutual consent, the Respondents adverted to the communication dated 21.10.2016

from the developer. With specific reference to Paragraph 17 thereof, the Respondents pointed out that the Petitioner stated that “we hereby accept cancellation and cancel all agreements as between us as we cannot anyway continue the deal...." A further communication dated 03.06.2017 was also referred to in this regard. On such basis, the Respondents contended that the finding of the Arbitral Tribunal to the effect that the Petitioner accepted the cancellation of the JDA is not liable to be interfered with.

11. As regards the findings on cost of construction, the Respondents pointed out that they had denied the correctness of the construction cost claim of the Petitioner. The Respondents also pointed out that the Government guideline value was adopted by the Petitioner while selling the land, whereas the Petitioner was refusing to accept the P.W.D. rates of construction. The Respondents also pointed out that the Petitioner did not produce the bills or invoices before the Arbitral Tribunal. The finding of the Arbitral Tribunal on this issue at page 97, paragraph 5 was referred to. On this issue, the Respondents referred to and relied upon several judgments, as set out below, with regard to the limited scope of Section 34 of the Arbitration and Conciliation Act,1996(the Arbitration Act):

(i) *Swan Gold Mining Limited v. Hindustan Copper Limited* (2015) 5 SCC 739 and, in particular, paragraphs 9, 11 and 12.

(ii) *Ssangyong Engineering and Construction company Limited v. National Highways Authority of India (NHAI)* 2019 SCC OnLine SC 677 and, in particular, paragraphs 37,38 and 41.

(iii) *Delhi Airport Metro Private Limited v. Delhi Metro Rail Corporation Limited* 2021 SCC OnLine SC 695 and, in particular, paragraphs 21, 22, 23 and 26.

(iv) *V.K.Abraham v. N.K.Abraham* AIR 1978 MADRAS 56 and,in particular, paragraph 15.

(v) *Punjab Civil Supplies Corporation Ltd v. M/s Ramesh Kumar and Company and others,* Civil Appeal No.6832 of 2021 dated 13.11.2021.

12. On the refusal of the Arbitral Tribunal to award *pendente lite* interest, the Respondents referred to the conclusions in the judgment of the Hon'ble Supreme Court in **G.C.Roy** to the effect that it is not necessary that the arbitrator should award *pendente lite* interest in every matter and that it is a matter of discretion. Likewise, the judgment of the Hon'ble Supreme Court in *Sree Kamatchi Amman Construction v. Railways,* (2010) 8 SCC

767, was also relied upon for the same proposition that the Arbitral Tribunal has the discretion whether to grant *pendente lite* interest or not. The judgment in *State of Haryana v. S.L.Arora & Company* (2010) 3 SCC 690 to the effect that the court should not interfere with the discretion exercised by the Arbitral Tribunal in deciding upon the rate of interest was also relied upon. For all these reasons, the Respondents contended that the Arbitral Award does not warrant interference.

13. The two main focal points of the Petitioner's challenge to the Arbitral Award are the amounts awarded in respect of construction cost and the refusal to grant *pendente lite* interest. However, before dealing with these two issues, it is necessary to first consider whether the finding of the Arbitral Tribunal that the JDA was cancelled by mutual consent warrants interference. The documents on record indicate conclusively that the Respondents initiated the process of cancelling the JDA. As pointed out by the Respondents, both by communication dated 27.08.2016 and by communication dated 03.06.2017, the Petitioner categorically stated that it had accepted the cancellation. Indeed, even in the statement of claim, at paragraph 18 thereof, the Petitioner stated as under:

> *"18....Further as per Paragraph 17 of the said reply Notice dated 21.10.2016 the Claimant had accepted the cancellation of the agreements entered*

between the developer/Claimant and the land owner/1st Respondent for the reasons as stated thereof...."

The Petitioner also stated as follows in paragraph 19 of the statement of claim:

"19. On 30/10/2016, the land owner/1st Respondent has replied to the above said notice dated 21/10/2016 issued by the Claimant. By way of this Notice the Land Owner had reciprocated and confirmed the acceptance of cancellation by the Claimant. Thus, the said Joint Development Agreement between the Parties got cancelled...."

14. In light of the statements in communications from the Petitioner to the Respondents and the statements made in the statement of claim before the Arbitral Tribunal, the conclusion of the Arbitral Tribunal that the cancellation of the agreements was by mutual consent cannot be faulted. Once this conclusion was drawn, the claims for damages both for loss of opportunity and mental agony become unsustainable because the first condition for such claims is to establish breach or wrongful termination of the JDA by the Respondents. The Petitioner also contended that

compensation is payable to an agent if a contract of agency is terminated without sufficient cause. However, no claim was made by the Petitioner towards compensation for wrongful cancellation of the Powers of Attorney before the Arbitral Tribunal. Therefore, such a claim in course of the Section 34 proceeding cannot be sustained.

15. The next issue to be considered is the conclusion of the Arbitral Tribunal with regard to the claim of the Petitioner towards construction cost. After noticing that the Chartered Accountant's certificate dated 21.05.2018 (Ex.C-21) was refuted by the Respondents on the ground that it is self serving and cannot be taken into consideration, the Arbitral Tribunal concluded as follows with regard to the evidence produced by the Petitioner:

> *"5. At the outset, it is relevant to be mentioned that any of the documents such as ledgers, books of accounts, work orders, bills etc. are produced before this Tribunal which are basis of the summary of costs arrived by the Claimant's Auditor. Neither the Auditor certificate nor the pleadings of the Claimant do reveal the nature of the details provided by the management to the Auditor for the preparation of the summary of costs. In the absence of such documentary evidence, this Arbitral Tribunal is unable to place any reliance on the Chartered*

Accountant's certificate in support of the claim made by the Claimant."

16. Thus, the Arbitral Tribunal recorded a finding that the Petitioner did not produce and exhibit in evidence its books of account, work orders or even the bills raised by third parties on the Petitioner towards supply of materials or manpower for undertaking construction activities pursuant to the JDA. While the Petitioner pointed out that the summary of cost of construction was forwarded to the Respondents under notice dated 06.01.2017 (Ex.C-15) and communication dated 14.09.2017 (Ex.C-18), which were exhibited in evidence, the undoubted position is that the bills and vouchers were not produced in evidence.

17. In these circumstances, the question that arises for consideration is whether the Arbitral Tribunal disregarded vital evidence. An easy-to-use test to determine whether a piece of evidence is vital is to ask the question whether the verdict would probably have been different if that piece of evidence had been taken into consideration. If the above test is applied, the Chartered Accountant's certificate qualifies as vital evidence. While on this issue, it should be noted that, as per Section 19 of the Arbitration Act, the Arbitral Tribunal is entitled to decide on the admissibility, relevance, materiality and weight of evidence. Therefore, the distinction between

disregarding vital evidence and considering but assigning little or no materiality or weight to evidence should be borne in mind. This distinction may be fine and not always easy to discern, but one method of making that distinction would be to consider whether the relevant arbitral tribunal engaged with the vital piece of evidence and recorded reasons for refusing to assign much materiality or weight thereto.

18. In this case, the Petitioner produced the Chartered Accountant's certificate, and the same was exhibited in evidence. The said Chartered Accountant's certificate contained an Annexure, and the Annexure contained a detailed break-up of payments made by indicating the purpose of payment, particulars of cheques, voucher numbers, etc. The Annexure consisted of four parts: construction cost of owner's villas; external development; legal costs; and overheads. This evidence was looked at by the Arbitral Tribunal, which entered a finding that the nature of details provided by the Petitioner to the Chartered Accountant for the preparation of the summary of cost is not evident. The contention of the Petitioner that this conclusion is not correct is not devoid of merit given the extent of detail in the Annexure to the Chartered Accountant's certificate. In addition, the certificate itself states that it is prepared “on the basis of vouching of

expenses and payments, relying upon ledgers extracted, books of accounts, work orders, bills and the details provided to us by the management of M/s First Post". Nonetheless, the conclusion of the Arbitral Tribunal in paragraph 5 of the Award, which is set out above, was based primarily on the non-production of books of account, bills and work orders by the Petitioner. Therefore, the findings should not be dissected and examined in isolation.

19. The Arbitral Tribunal also noticed that the Chartered Accountant's certificates (including earlier certificates) provided a summary of costs as on three different dates, namely, 31.12.2016, 31.08.2017 and 15.08.2018. The Arbitral Tribunal further took note of the fact that the JDA was cancelled with effect from 21.10.2016. Therefore, the Arbitral Tribunal held that work done after the cancellation of the JDA cannot be taken into consideration. In this connection, the Arbitral Tribunal recorded, *inter alia,* as under in paragraph 7 of the Award:

> *"7.... Further the reading of the tabular column enclosed along the Auditor's certificate containing the details of payments made, nature of the work done, quantum of the amount and the date of the cheques etc., would reveal that the same appears to include the value of work done much after the acceptance of the cancellation of the JDA. The material discrepancies in the above aspect, would*

> *compel this Arbitral Tribunal not to place any reliance on the summary of costs produced on the Claimant side."*

On these grounds, the Chartered Accountant's certificate and the summary of costs annexed thereto were not relied upon.

20. Under Section 34 of the Arbitration Act, the court does not sit in appeal over the decision of an arbitral tribunal. Consequently, with regard to the appraisal of evidence, the court interferes when the relevant award is based on no evidence, irrelevant evidence or if vital evidence is disregarded. In this case, it cannot be said that the findings are based on no evidence or completely irrelevant evidence. As regards disregarding of vital evidence, the Arbitral Tribunal did not disregard the Chartered Accountant's certificate; instead, the Arbitral Tribunal considered the said certificate and the Annexure thereto but refused to assign much materiality or weight to such evidence. The Arbitral Tribunal also recorded reasons for not assigning much materiality or weight to such evidence. While the reasons assigned by the Arbitral Tribunal for not assigning much materiality or weight to the Chartered Accountant's certificate are not entirely convincing and may possibly have justified interference in appellate proceedings, it certainly cannot be said that vital evidence was disregarded. Consequently,

in view of the limited scope of interference under Section 34 of the Arbitration Act, such appraisal of evidence does not call for interference.

21. An ancillary issue was raised with regard to the rejection of the Petitioner's claim for a sum of Rs.81,94,510 towards provision of amenities. The contention of the Petitioner was that the conclusion “that there is no agreement between the Claimant and the third-party purchasers for providing common amenities” is patently erroneous. The exhibits on record do not include the construction agreements between the third-party purchasers and the developer, and only the sale deeds as regards the purchase of land are on record. The Arbitral Tribunal also recorded a finding, on this issue, that the Petitioner did not provide satisfactory evidence of the genuineness of the cost incurred on the amenities. In these facts and circumstances, the rejection of this claim does not warrant interference.

22. The last issue to be considered is the refusal of the Arbitral Tribunal to award *pendente lite* interest. As pointed out by the Respondents, the Hon'ble Supreme Court instructs in cases such as **Sree Kamatchi Amman Constructions** and **C.G.Roy** that the Arbitral Tribunal

has discretion to decide whether to award *pendente lite* interest or not. In the case at hand, the net payout to the Petitioner is partly towards the amounts advanced by the Petitioner to the Respondents in terms of the JDA and partly towards cost of construction after setting off amounts realized by the Petitioner from the sale of three plots. As regards refund of advances, the Arbitral Tribunal took into consideration the fact that the JDA did not provide for the payment of interest thereon. With regard to construction cost and ancillary expenses, an adjudication by the Arbitral Tribunal was necessary before the amounts payable in such regard could be determined. In those circumstances, the Arbitral Tribunal declined to grant *pendente lite* interest. Such conclusion cannot be characterised as patently illegal or contrary to public policy so as to warrant interference. While on this issue, it should be noticed that post-Award interest at 18% per annum was granted.

23. As a result, the Petitioner has failed to make out a case to interfere with the Award. Therefore, Arb.O.P. No.1039 of 2019 is dismissed without any order as to costs. Consequently, connected Application No.9625 of 2019 is closed.

Sd./- S.K.R.J.,
12.01.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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