



C.M.A.No.2407 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :23.01.2023

Judgment Pronounced on :28.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2407 of 2022

in

C.M.P.No.18708 of 2022

T.S.Unni Sankar
Proprietor,
M/s.SUS Construction Company,
Thuckaly,
Kanyakumari District – 629 175

... Appellant

vs.

Mrs.S.Elakkiya

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996, against the order of the learned Arbitrator dated 02.05.2022 and made in Application No.2 of 2022 for the order was passed sole Arbitrator.

For Appellant : Mr.U.Gokulakrishnan

For Respondent : Mr.Ashokapathy



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J U D G M E N T

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This Civil Miscellaneous Appeal is filed against the order in Application No.2 of 2022 in the unnumbered Arbitration Case 2021 before the sole Arbitrator.

The brief facts leading to filing of this case are as under:

2.(a) There was an agreement dated 18.08.2019, for construction of building in the site, owned by the respondent herein. It appears that the building contractor viz., petitioner/appellant has issued a legal notice that he has completed the work to the extent possible and has also done other works as requested by the owner of the property and demanded a sum of Rs.1,70,00,000/- as cost of work and even without waiting for the reply, he filed an application under Section 9 of the Arbitration and Conciliation Act 1996, for appointment of an Arbitrator.

(b) Accordingly, by an order dated 24.09.2021, an Advocate Mr.K.V.Balu was appointed as a Sole Arbitrator and he initiated the Arbitration proceedings as per law. In the first hearing, both the parties seemed to have been present. There is no oral evidence and pleadings have been exchanged. Subsequently, the appellant herein has moved an interim application No.02 of 2022, seeking for appointment of an Advocate Commissioner along with an expert to inspect the property and note down the works done by him to assess the damage.



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(c) It remains to be stated that in the pending arbitration case viz., Arb.Appl.No.187 of 2021, under Section 9 of the Arbitration and Conciliation Act 1996, there was an Advocate Commissioner, who had inspected the property, noted down the features and has also filed a report. Observing the same, the interim application for appointment of Advocate Commissioner and an Expert has been rejected by the Sole Arbitrator and hence the present appeal.

3. After hearing both the parties and perusing the records, I find that there was a construction agreement between the parties on 18.08.2019. As per the said terms of the agreement, the appellant/contractor had agreed to complete the construction of the building within a period of one year from the date of execution of the agreement and it is alleged that he has abandoned the construction work on 11.08.2021 which resulted in issuance of legal notice by the claimant to the respondent on 17.08.2021. Subsequently, the appellant herein filed application under Section 9 of the Arbitration and Conciliation Act, 1996 for the appointment of Advocate Commissioner before this Court on 18.08.2021.



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4. By an order dated 03.09.2021, an Advocate Commissioner namely Thiru.R.Bhagawat Krishna, Advocate, New No.326, Old No.170, 3rd Floor, Sai Kripa Building, Thambu Chetty Street, Chennai 600 011, Mobile No.9940246230, was appointed as the Advocate Commissioner and he was directed to inspect the property more fully set out in the schedule situated in Plot No.142, Samson Saroja Street, Golden George Nagar, Mogappair East, Chennai 600 107 along with a Civil Engineer and to note down the physical features of the construction, nature of construction, stage of the construction, construction work already completed and the work yet to be completed and to file a report before this Court on or before 09.09.2021.

5. Subsequently, he has filed a Civil Engineer's Report on 18.09.2021 assessing the completion of the construction was filed. On 18.12.2021, statement of objection was filed by the claimant in the arbitration case. When the arbitration proceedings were about to commence, it appears that the applicant, who is the contractor, has filed another application for appointment of Civil Engineer / Valuer to evaluate the value of the work executed by the applicant from the foundation to the present stage of construction in the site Plot No.142, situated in



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Samson Saroja Street, Golden George Nagar, Mogappair East, Chennai 600

107. The same was rejected on the ground that arbitration proceedings were pending and this Court has appointed one Bhagawat Krishna as an Advocate Commissioner to inspect the property along with Civil Engineer to note down the physical features of the nature of the construction, stage of the construction and construction work already completed and the work yet to be completed and report is already on record. Observing so, the said application was rejected and hence this Civil Miscellaneous Appeal.

6. At the outset, the present application is of the evaluation of the work executed by the applicant from the foundation in the present stage of the construction. However, I find that the balance of the work has already been completed as per 18.09.2021 Civil Engineer's Report assessing the completion of the construction work.

7. The application is under Section 17(1)(ii)(c) of the Arbitration and Conciliation Act, 1996 before the learned Arbitrator to appoint a Technical expert in the field of construction Engineering to visit the schedule disputed site. The Arbitration Tribunal has observed that the present application is the one for which a relief has already been obtained by the appellant under Section 9 of the Arbitration and Conciliation



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Act, 1996 before the High Court and the Tribunal opined that appellant having exercised similar relief earlier and the same cannot be encouraged by the Tribunal.

8. The application is filed under Section 17(1)(ii)(c) of the Arbitration and Conciliation Act, 1996 for the appointment of technical expert which was rejected and hence appeal was filed under Section 37 of the Arbitration and Conciliation Act, 1996.

9. After hearing the rival submissions, the appellant/ contractor has not completed the work even after the expiry of the contractual period and abandoned the site on 10.08.2021 and the respondent land owner has made alternate arrangement and proceeded with a construction and completed in the month of March 2022. Petition under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by the appellant/ contractor and Arbitration Application No.187/2021 and O.A.No.515 of 2021 was also been numbered. In which, this Court has appointed an Advocate Commissioner on 01.09.2021 to inspect the premises with an expert Civil Engineer on 18.09.2021 and also filed a report in connection with the stage and nature of the construction.



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10. For the said report, the appellant/ contractor has not filed any appeal as could be seen from the records of the Court and now that after completion of the construction by the another contractor in the month of March 2022, the premises were occupied by the residents. Now, the arbitral proceedings are at the stage of cross examination of R.W.1.

11. At this juncture, he has filed the present interim application and hence, I find that it is only with the view to prolong the litigation and has intentionally filed the application with an intention to defeat the scope of arbitration and to prevent the conclusion of the proceedings.

12. The arbitrators have rightly observed that a similar application has already been filed before the High Court and orders have been passed. Pursuant to the said order, an expert Advocate Commissioner along with an expert civil engineer has inspected the site and filed the report for which he has not chosen to file any appeal. Hence, it is nothing but duplication of the work with an intention to delay the arbitral proceedings and also to cause damage to the construction put up by the respondent.



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13. The view expressed by the arbitrator is well founded and well merited and does not warrant any interference at the appellate stage as the same does not suffer from any illegality or irregularity warranting interference.

14. In this view of the matter, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected C.M.P is closed.

28.02.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes/ No

To

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



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RMT.TEEKAA RAMAN, J.,

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