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O.P.No.491 of 1999

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

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Madras Port Trust,
rep.by its Chief Engineer,

...Petitioner

Vs.

1. M/s.Complex Pile Foundation,
rep. by its Proprietor,
Sri.K.Ramachandran.

2. Sri.K.R.Gururajan
Retired District Judge, Arbitrator.

.. Respondents

Original Petition, filed under Section 34 of the Arbitration Act, 1996 to set aside the award dated 19.11.1998, received by the petitioner on 21.11.1998, made by the second respondent in Case No.G/MPT/3 of 1997, in the dispute between the petitioner and the first respondent as illegal and



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to direct the first respondent to pay costs.

For Petitioner : Mr.G.Ramesh Sanjay

For Respondent-1 : No appearance

For Respondent-2 : No appearance

ORDER

The petitioner has filed this Original Petition seeking to set aside the award passed by the Arbitral Tribunal in Case No.G/MPT/3 of 1997, dated 19.11.1998.

2. The facts, which led to the filing of this Petition is as follows:-

i) Madras Port Trust, represented by its Chief Engineer invited tenders for construction of Compound Wall and Fencing Arrangement in the Fishing Harbour at Madras. The first respondent, (claimant) participated in the tender and the petitioner-Port Trust accepted the claimant's tender and they both entered into an agreement on 05.10.1995.

ii) Thereafter, the petitioner issued two notices pointing out that the



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progress of the work was very slow and that if the progress of the work is not satisfactory, contract would be terminated. Subsequent thereto, the petitioner issued a termination notice on 23.05.1996, which resulted in a dispute between the parties and the matter was referred to the Arbitrator, by invoking arbitration proceedings, as per the clause contained in the Agreement and one Mr.A.R.Guru Rajan was appointed as the sole Arbitrator. The learned Arbitrator based on the claim statement and the counter statement filed by the parties respectively, passed an award. Aggrieved against which, the petitioner, Madras Port Trust has filed the present Original Petition.

3. The impugned award was passed in the year 1998 and challenging the said award, the petitioner has filed the Original Petition in the year 1999 and at the time, when the Original Petition was entertained, i.e. on 04.08.1999, only notice was ordered, thereafter, the matter has not been listed for nearly a decade for the reasons best known to the Registry and listed for the first time on 20.02.2024, i.e. after a lapse of 16 years; that even on the said date, the learned counsel for the petitioner made a request



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to adjourn the case by three weeks, and again on 26.03.2024, when the matter was called, the learned counsel made a similar request to adjourn by two weeks.

4. Thus, the matter has been adjourned for two occasions only at the request of the learned counsel for the petitioner. Even today, when the matter is taken up for hearing, the learned counsel for the petitioner is not interested to argue the matter rather interested in seeking adjournment. However, this Court is not inclined to keep the matter pending any more, as the matter pertains to the year 1999 and hence, urged the learned counsel to contest the matter, pursuant to which, he assailed the award by merely contending that the award is arbitrary, illegal and against Public Policy, but, the learned counsel is not in a position to putforth his contentions as to on what basis, the award is illegal and against the Public Policy.

5. However, this Court gone through the materials available on record and on perusal of the same, it is clear that the award passed by the Arbitral Tribunal is well reasoned and well considered, inasmuch as, the



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learned Arbitrator after giving sufficient opportunities to both the parties and after noting the statement/counter statement of the first respondent-claimant and the petitioner-Port Trust on each claims/counter claims, rendered his findings in respect of each claims followed by a summary and passed an award, and it would be apposite to extract the operative portion of the impugned award, which is as follows:-

“ In the result, I pass an award as follows:-

The respondent will pay Rs.136/- to the claimant with interest thereon at 18% p.a. from 11.06.1997 till realisation. The respondent will return to the claimant the Bank Guarantee furnished to it by the claimant towards the security deposit. The respondent is entitled to recover Rs.1,96,649/- from the claimant it being the balance of mobilisation advance with interest thereon at 18 p.a. from 25.06.1997 till realization by enforcing the bank guarantee towards mobilisation advance. If any deficit remains after realizing the said bank guarantee, the respondent is entitled to recover it from the claimant. If for any reason, the bank guarantee for mobilisation advance cannot be enforced, the respondent is entitled to recover the aforesaid amount of Rs.1,96,649/- with



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interest thereon at 18% p.a. from 25.06.1997 till realization from the claimant. The parties will bear their own costs of these arbitration proceedings. The Arbitrator's fee of Rs.20,000/- has been paid to me by the parties in moities. The Advocate's fee for the respondent is fixed at Rs.10,000/- No advocate's fee is fixed for the claimant as he conducted the case in person after a certain stage."

6. Therefore, this Court is not inclined to interfere with the findings of the Arbitrator, since, it is well settled law that the arbitrator is the master of facts, and when the arbitrator on the basis of record and materials which are placed before him rendered specific findings, the Court cannot ignore those findings. Further, this Court would like to point out that the award could be set aside, if it is so unfair and unreasonable that it shocks the conscience of the Court and it is open to the Court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India. But, in the present case, it is found that the view of the arbitrator is a plausible one, and hence, the Court refrains itself from interfering with



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such findings. That apart, as stated supra, the learned counsel is not able to substantiate his contentions as to on what basis the award is illegal and against the public policy. Hence, this Court is not inclined to interfere with the award passed by the Arbitral Tribunal.

7. The Original Petition is, accordingly, dismissed. No costs.

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Krishnan Ramasamy,J.

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