



WEB COPY



O.S.A(CAD)No.38 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

O.S.A(CAD)No.38 of 2024

M/s.Abhiram Infra Projects Pvt. Ltd.,
Flat No.B-302, Utsav
Seenappa Layout, New BEL Road
Bengaluru - 560 094
Represented by its
Managing Director Sri.A.Peri Reddy

... Appellant

Vs.

The Chennai Metro Water Supply and Sewerage Board
4th Floor, No.1, Pumping Station Road
Chintadripet, Chennai-600 002
Represented by its Managing Director

.. Respondent

Original Side Appeal filed under 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996, praying to set aside the fair and decretal order dated 18.01.2024 made in O.P.No.60 of 2021 by allowing this appeal only to the extent state

Page Nos.1/9



O.S.A(CAD)No.38 of 2024

hereinabove.

WEB COPY

For Appellant : Mr.P.J.Sri Ganesh

J U D G M E N T

[Judgment of the Court was made by M.SUNDAR, J.,]

After arguments, Mr.P.J.Sriganesh, learned counsel for appellant sought leave of this Court to withdraw the captioned 'Original Side Appeal' [hereinafter 'OSA' for the sake of brevity, convenience and clarity].

2. Learned counsel on record for appellant company has made an endorsement in the case file and a scanned reproduction of the same is as follows:

I am seeking the leave
of this Hon'ble Court
to withdraw the OSA(CAD)
No. 38/2024. The leave is
sought based on the instructions
of the client.
P.J. Ganesh
Counsel for Appellant
12/09/2024



O.S.A(CAD)No.38 of 2024

3. Adverting to paragraph Nos.7 and 8 of the impugned order, learned counsel for appellant sought further leave of this Court to preserve rights of appellant company to seek review as according to learned counsel, appellant company gave consent / joined in the request with CMWSSB only with regard to constitution of Arbitral Tribunal and not for setting aside the entire award including paragraph No.5 of award. We make it clear that we express no opinion on this as any disputation regarding what transpired in another Court more so in earlier tier of litigation i.e., Section 34 Court presided by a Hon'ble single Judge (in this case) that can only be a ground for review before that very same Court and cannot be a ground of appeal. This principle was laid down by Hon'ble Supreme Court in ***State of Maharashtra Vs. Ramdas Shrinivas Nayak and another*** reported in ***1982 2 SCC 463*** and relevant paragraph is paragraph No.4 which reads as follows:

'4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid



WEB COPY



O.S.A(CAD)No.38 of 2024

that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a



O.S.A(CAD)No.38 of 2024

wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.'

4. Aforementioned principle and principle that review should be by the same counsel was laid down by this Court in ***Virgo Polymer case [Tamil Nadu Industrial Investments Corporation Limited Vs. Virgo Polymer (India) Limited and others*** reported in ***2018 SCC OnLine Madras 11644***. Relevant paragraphs are paragraph Nos.12 and 27 and the same read as follows:

'12. From paragraph Nos.9 and 10 of order of Division Bench in writ appeal re-produced supra, it emerges clearly that what actually transpired before this Court on 24.07.2017, when the writ petition came to be disposed of was put in issue. Therefore, relying on the time honoured principle laid down in this regard by Hon'ble Supreme Court inter alia in Ram Bali Vs.State of Uttar Pradesh, 2004 SCC (Cr1) 2045, State of Maharashtra Vs.Ramdas Shrinivas Nayak and Anr (1982 (2) SCC 463), Bhavnagar University Vs.Palitana Sugar Mill (P) Ltd. And Ors. (2003 (2) SCC 111), and Roop Kumar Vs.Mohan Thedani (2003 (6) SCC 595) , Hon'ble Division Bench came to the conclusion that the only remedy available to TIIC is to approach the learned Single Judge by way of



an appropriate application, if so advised. Saying so, the writ appeal was disposed of. '

'27. In the aforesaid backdrop of settled principles, [Raju Reddiar](#)'s Case which has been pressed into service by Virgo has been followed by a learned Single Judge of Madras High Court in [R.Swaminathan Vs. Sivagowri](#) in Review Application No.51/2009 dated 03.08.2009 where it has been held that the review petition has to be filed by the same counsel on record. In this R.Swaminathan's case ([Paragraph No.27](#)) [Raju Reddiar](#)'s case principle [laid down by Hon'ble Supreme Court](#) has been extracted and relevant portion reads as follows:

27. Added further, the learned counsel for the respondent wife relies on the decision of Hon'ble Supreme Court in Tamil Nadu Electricity Board Vs. N.Raju REddiar (1997) 9 SCC 736 wherein it is held as follows:

"....except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining



consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.”

5. Without expressing any opinion or view one way or the other, we make it clear that we preserve rights of appellant company to seek review more particularly qua paragraph Nos.7 and 8 of the impugned order, if so advised and so desired i.e., nature of consent / request made by both sides.

6. Captioned OSA disposed of as closed / withdrawn albeit with aforementioned preservation of rights and window for review in the aforesaid manner. There shall be no order as to costs

(M.S.,J.)

(K.G.T.,J.)

17.04.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk



O.S.A(CAD)No.38 of 2024

To

WEB COM
The Sub-Assistant Registrar
Original Side
High Court, Madras.

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

O.S.A(CAD)No.38 of 2024

Page Nos.8/9



WEB COPY



O.S.A(CAD)No.38 of 2024

17.04.2024

Page Nos.9/9