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C.M.A.Nos.3023 & 3024 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. Nos.3023 & 3024 of 2019

K.Raju

.. Appellant in both cases

Vs.

Union of India,
Ministry of Urban Development,
Government of India
rep. by the Executive Engineer, PCD, CPWD ,
Puducherry - 605 005. .. Respondent in both cases

Prayer in both cases: Civil Miscellaneous Appeals filed under Section 37(1) of the Arbitration and Conciliation Act, 1996 against the decree and judgment dated 11.03.2019 made in Arbitration O.P. Nos.45 & 79 of 2013 on the file of the Principal District Judge at Puducherry.

For appellant in both cases : Mr.N.Thiagarajan

For respondent in both cases : Mr.V.Chandrasekaran,
Standing Counsel

COMMON JUDGMENT

These appeals have been filed under Section 37(1) of the Arbitration and Conciliation Act, 1996, challenging the impugned orders, both dated 11.03.2019, passed under Section 34 of the Arbitration and



C.M.A.Nos.3023 & 3024 of 2019

Conciliation Act, 1996 by the Principal District Judge, Puducherry in
Arb.O.P. Nos.45 and 79 of 2013.

2.Under both the impugned orders dated 11.03.2019, the Arbitral Awards dated 09.10.2012 have been set aside by the learned Principal District Judge, Puducherry on the ground that the Arbitrator has not given any reason for awarding the amount and he has also acted beyond the terms of the contracts. The learned Principal District Judge, Puducherry, while allowing Arb.O.P. Nos.45 and 79 of 2013, has also observed that the Arbitrator has not given clear cut and specific findings for reaching the conclusion. By giving the aforesaid findings, the learned Principal District Judge, Puducherry has held that the grounds raised by the respondent will fall within the purview of Section 34 of the Arbitration and Conciliation Act, 1996 and has set aside both the Arbitral Awards. Aggrieved by the same, the claimant in the Arbitration has filed these appeals under Section 37(1) of the Arbitration and Conciliation Act.

3.The appellant is the claimant in both the claims, which are the subject matter of two Arbitral Awards, both dated 09.10.2012. The



C.M.A.Nos.3023 & 3024 of 2019

appellant/claimant was a Contractor with the respondent and he was awarded a civil contract. Since there arose disputes, the appellant/claimant referred the dispute to arbitration in accordance with the Arbitration Clause, contained in the respective contracts. In respect of the claim, which is the subject matter of consideration in Arb.O.P. No.45 of 2013, the appellant/claimant had made the following claims before the Arbitrator:

a)Centering height floor to floor - extra height to be paid
Rs.1,84,950/-;

b)Centering for external portion column - Rs.2,20,501/-;

c)Finishing the interior wall with putty finish - Rs.3,45,787/-;

d)Extra cost for centering for unusual (irregular) shape - Rs.90,606/-

;

e)Extra cost for labour for high rise building 10 mt. above -
Rs.3,73,062/-;

f)Cost escalation under Agreement clause 10 CA;

g)Refund of VAT recovered;

h)Refund 1% of labour cess recovered in another work to be
refunded Rs.1,85,822/-.



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4. Before the Arbitrator, the respondent made a counter claim against the appellant/claimant for a sum of Rs.5,00,000/- owing to the alleged undue harassment caused to them by the appellant/claimant for raising unsustainable claims.

5. The appellant/claimant raised another claim before the Arbitrator in respect of another contract awarded to him, which is the subject matter of consideration in Arb.O.P. No.79 of 2013. In the said claim, the appellant/claimant had made the following claims:

a) Establishment expenses from 01.03.2006 to 31.08.2006 - 6 months claim for Rs.3,66,000/-;

b) Investment claim for Rs.2,80,050/-;

c) Extra height for centering for which floor height is more than 3.50 mtrs - claim for Rs.2,69,100/-;

d) Extension height in centering for external surfaces - claim for Rs.1,20,198/-;

e) Finishing the wall with acrylic wall putty finish - claim for Rs.6,43,261/-;



C.M.A.Nos.3023 & 3024 of 2019

WEB COPY

- f)Extra cost of first coat of painting - claim for Rs.1,48,000/-;
- g)Extra cost for extra lift - claim for Rs.2,48,000/-;
- h)Extra cost for centering for unusual (irregular) shape - claim for Rs.46,729/-;
- i)Extra cost for jungle clearance - claim for Rs.86,063/-;
- j)Extra cost for labour construction - claim for Rs.7,500/-;
- k)Extra height for plastering - claim for Rs.12,000/-
- l)Reduction in scope of work - loss on expected profit - claim for Rs.6,69,201/-;
- m)Increase in cost of materials - claim for Rs.25,00,000/-;
- n)Difference in profit - claim for Rs.10,34,000/-;
- o)Increase in cost index - claim for Rs.42,36,540/-;
- p)New claim for belated payment of pre-final/final bill/settlement of final accounts:18% interest claimed - claim for Rs.9,56,095/-.

6.The respondent in the second claim as well, has made a counter claim before the Arbitrator for a sum of Rs.5,00,000/- for the alleged harassment caused to them on account of the unsustainable claims made by the appellant/claimant.



C.M.A.Nos.3023 & 3024 of 2019

7.The Arbitrator has passed two separate Awards, both dated 09.10.2012 in respect of the two claims, which are the subject matter of Arb.O.P. Nos.45 and 79 of 2013. In respect of the first Award dated 09.10.2012, which is the subject matter of C.M.A. No.3023 of 2019, the Arbitrator has awarded a sum of Rs.9,99,866/- in favour of the appellant/claimant together with interest at the rate of 10% per annum from the date of the invocation of arbitration (19.10.2010) till the date of payment. In respect of second Arbitral Award dated 09.10.2012, the Arbitrator has awarded a sum of Rs.43,54,207/- in favour of the appellant/claimant together with interest at the rate of 10% per annum from the date of invocation of arbitration (22.03.2010) till the date of Award.

8.The learned Principal District Judge, Puducherry, while allowing Arb.O.P. Nos.45 and 79 of 2013, which were filed by the respondent under Section 34 of the Arbitration and Conciliation Act challenging both the Awards, has allowed the said petitions on the ground that

a)the Arbitrator has not given any reason for awarding the amount in favour of the appellant/claimant and further he has acted beyond the terms of the contract;

b)the Arbitrator has not given clear cut and specific findings for



reaching a conclusion that the appellant/claimant is entitled for the respective award amounts;

c)the Arbitrator has acted against the terms of agreement.

9.In the case on hand, the claims made by the appellant/claimant before the Arbitrator are disputed claims. As seen from the Arbitral Awards, the respondent has categorically asserted that only to harass them, the arbitral claims were made by the appellant/claimant. Infact they have themselves made a counter claim against the appellant/ claimant for a sum of Rs.5,00,000/- in each of the arbitration claims, initiated by the appellant/claimant. They have categorically denied their liability to pay each of the claims made by the appellant/claimant before the Arbitrator as seen from the Arbitral awards. The claims made by the appellant/claimant also involve claims for un-liquidated damages as seen from the list of claims enumerated supra. The impugned awards also does not disclose the list of documents filed by both the parties as none of those documents have been marked as exhibits. It is also an un-disputed fact that no oral evidence was let in by both the parties to the dispute. Whenever there is an un-liquidated claim, it is absolutely necessary that oral evidence will have to be let in to enable the opposite party who is



disputing it to rebut the claim through cross examination. The claims of the appellant/claimant have been categorically disputed by the respondent as seen from the Arbitral Awards.

10.The learned Principal District Judge, Puducherry, after analysing the Arbitral Awards, has come to the right conclusion that without any evidence, the Awards have been passed directing the respondent to pay the award amount to the appellant/claimant. The learned Principal District Judge, Puducherry, while allowing the petitions filed under Section 34 of the Arbitration and Conciliation Act, has referred to various clauses under the contracts and only thereafter, has rightly come to the conclusion that the Arbitrator has gone beyond the terms and conditions of the contracts. Even though certain documents were referred to by the Arbitrator, it is not clear as to whether those documents were marked as exhibits or whether the respondent had raised any objection with regard to the admissibility of those documents as a piece of evidence. The Arbitral Awards must contain reasons for arriving at a particular conclusion, but, as seen from the Awards passed by the Arbitrator, which are the subject matter of these appeals, as rightly held by the learned Principal District Judge, Puducherry, under the impugned



C.M.A.Nos.3023 & 3024 of 2019

awards, no plausible reasons have been given for awarding the amounts in favour of the appellant/claimant. The learned Principal District Judge, Puducherry has analysed each and every claim made by the appellant/claimant, which are the subject matter of the arbitration and the corresponding clause in the contract and only thereafter, has come to the correct conclusion that both the Awards have to be set aside under Section 34 of the Arbitration and Conciliation Act as the Arbitrator has not given any reason for awarding the amounts and further he has acted beyond the terms of the contracts.

11.The learned Principal District Judge, Puducherry, under the impugned orders, has rightly held that the grounds raised by the respondent under Section 34 of the Arbitration and Conciliation Act squarely fall within the purview of Section 34 of the Arbitration and Conciliation Act and has rightly set aside the Arbitral Awards, both dated 09.10.2012, passed in favour of the appellant/ claimant.

12.The scope under Section 37 of the Arbitration and Conciliation Act is further restricted as the learned Principal District Judge,



C.M.A.Nos.3023 & 3024 of 2019

Puducherry, while exercising his powers under Section 34 of the Arbitration and Conciliation Act, has rightly held that the challenge to the Arbitral Awards fall within the purview of Section 34 of the Arbitration and Conciliation Act.

13.This Court does not find any infirmity in the impugned orders of the learned Principal District Judge, Puducherry in Arb.O.P. Nos.45 and 79 of 2013. Accordingly, these appeals are dismissed. However, liberty is granted to the appellant/claimant to initiate fresh arbitration against the respondent.

14.Since the appellant/claimant has filed these appeals under Section 37 of the Arbitration and Conciliation Act and the Arbitral Awards passed in his favour has been set aside, the period spent by him before the Arbitrator as well as before the learned Principal District Judge, Puducherry in Arb.O.P. Nos.45 and 79 of 2013 and before this Court in these appeals shall be excluded for the purpose of saving limitation under Section 14 of the Limitation Act. No costs.

15.07.2024

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C.M.A.Nos.3023 & 3024 of 2019

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- 1.The Principal District Judge,
Puducherry.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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C.M.A.Nos.3023 & 3024 of 2019

ABDUL QUDDHOSE, J.

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C.M.A. Nos.3023 & 3024 of 2019

15.07.2024