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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MRS. JUSTICE GOVINDARAJAN THILAKAVADI

C.M.A. Nos.2013 and 2015 of 2024
and
C.M.P. Nos.15562 and 15565 of 2024

N. Ramaswamy
Partner of M/s.RBS Group
having registered office at
31/32, II Floor, Classic Homes
Seetharam Nagar, II Street
Velachery, Chennai 600 042

Appellant in both appeals

v

1. R. Bojan
2. Geetha Ramaswamy
Partner of M/s. RBS Group
having registered office at
31/32, II Floor, Classic Homes
Seeetharam Nagar, II Street
Velachery
Chennai 600 042

Respondents in both appeals

Civil Miscellaneous Appeals filed challenging the proceedings dated 05.07.2024 in I.A. Nos.1 and 2 of 2024 in unnumbered Arbitration Case of 2023 arising out of Arb. O.P. (Comm. Div.) No.185 of 2023 on the file of this Court.

For appellant in both appeals Mr. G. Ashokapathy
for Mr. V. Achuthanandan



COMMON JUDGMENT

(made by M. SUNDAR, J.)

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This common judgment will now govern the captioned two 'Civil Miscellaneous Appeals' (hereinafter referred to as 'CMAs' in plural and 'CMA' in singular for the sake of brevity, clarity and convenience) and connected 'Civil Miscellaneous Petitions' (hereinafter referred to as 'CMPs' in plural and 'CMP' in singular for the sake of brevity, clarity and convenience) thereat.

2. Captioned two CMAs have been filed in this 'Commercial Appellate Division' (hereinafter referred to as 'CAD' for the sake of brevity) on 18.07.2024 by first respondent before an 'Arbitral Tribunal' (hereinafter referred to as 'AT' for the sake of brevity) assailing order/proceedings dated 05.07.2024 made by the AT. This '05.07.2024 order/proceedings of AT' shall hereinafter be referred to as 'impugned order' for the sake of convenience.

3. Mr. Ashokapathy, learned counsel appearing on behalf of Mr.V.Achuthanandan, counsel on record for appellant in both the captioned CMAs is before us in the Admission Board.



4. Learned counsel submitted that the captioned CMAs have been filed/presented in this CAD under Section 37(2)(a) of the 'Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' (hereinafter referred to as 'A & C Act', for the sake of brevity, clarity and convenience).

5. Owing to the limited legal perimeter within which a legal drill under Section 37 of A & C Act should perambulate, more so owing to the nature of the instant case, short facts will suffice.

6. Factual matrix, in a nutshell, is that there are two primary contracts captioned 're-constituted partnership deeds', one dated 01.04.2016 and another dated 01.07.2021; that both these primary contracts have a dispute resolution clause which serves as an arbitration agreement between the parties; that it is to be noted that the dispute resolution clause is clause 21 of both the primary contracts; that this clause 21 of the two primary contracts serve as arbitration agreement between the parties to the primary contracts, *i.e.*, arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of the A & C Act; that disputes erupted between the parties to the primary contracts, *i.e.*, partners (to be noted, the partners were

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carrying on business in compendious name and style 'M/s. RBS Groups' at Chennai); that the arbitration clause was triggered by the claimant (claimant before AT) *vide* Arb.O.P. (Com. Div.) No.185 of 2023 and the Section 11 Court, in and by order dated 14.07.2023, appointed a learned member of this Bar as Sole Arbitrator; that the Section 11 order has been given quietus and all the parties have submitted themselves to the jurisdiction of the AT; that there is no disputation or contestation as regards the jurisdiction of the AT; that the petitioner before the Section 11 Court was the claimant before the AT; that the order of the Section 11 Court which is dated 14.07.2023 was uploaded on the official website of this Court on 21.07.2023; that the certified copy of this order was made ready on 11.08.2023 and on despatch, it was received by the learned Arbitrator in August of 2023; that thereafter, the first sitting of the AT was held on 29.09.2023, wherein, timelines were drawn up; that there were two respondents before the AT and the appellant before us in the captioned two CMAs, is the first respondent (R1) before the AT; that *vide* impugned order, the AT has negatived two applications filed by R1, one to permit R1 to file an additional statement of defence-cum-counter claim and another application to permit R1 to file seven additional documents; that aggrieved by this common impugned order, R1 before the AT is on appeal before this CAD *vide* captioned two CMAs.



7. This Court, having set out the factual matrix in a nutshell, *i.e.*, short facts containing essential facts imperative for appreciating this judgment, deems it appropriate to set out a chronology for better appreciation of this judgment and the same is as follows:

S.No.	Date	Event
1	01.04.2016	Reconstituted partnership deed - I
2	01.07.2021	Reconstituted partnership deed – II
3	14.07.2023	Order of Section 11 Court in Arb. O.P. (Com. Div) No.185 of 2023 appointing Sole Arbitrator (AT)
4	21.07.2023	Above order of Section 11 Court was uploaded on the official website of this Court
5	11.08.2023	Certified copy of the aforementioned order dated 14.07.2023 of Section 11 Court was made ready
6	August of 2023	Sole Arbitrator, a learned member of this Bar, who is now constituting AT, received this appointment order. In other words, received in writing, the factum of his appointment
7	29.09.2023	First sitting of AT (Proceedings in which timelines for arbitral proceedings were drawn up)
8	---	Claimant filed claim statement, claim statement is undated but it is certainly after the first sitting of AT on 29.09.2023, however in any event prior to 27.11.2023 as the statement of defence of the respondents is dated 27.11.2023



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S.No.	Date	Event
9	27.11.2023	Statement of defence of the respondents (though statement of defence, it is styled/captioned 'counter filed on behalf of the respondents')
10	27.02.2024	Issues framed by AT
11	20.03.2024	Proof affidavit of CW1
12	29.05.2024	Proceedings of AT fixing 19.06.2024 as the date for cross-examination of C.W.1
13	19.06.2024	Hall at MHCAC (Madras High Court Arbitration & Conciliation Centre) was not available and therefore, this sitting was rescheduled to 05.07.2024
14	01.07.2024	The present counsel filed change of vakalat for R1 (to be noted, this is the third counsel for R1 before the AT)
15	04.07.2024	Aforementioned two applications for filing additional statement of defence/cum-counter claim and seeking permission to file seven additional documents filed by R1
16	05.07.2024	Impugned order made by AT

8. This CAD, having set out factual matrix and chronology capturing essential and crucial dates, now proceeds to write that the captioned CMAs deserve to be dismissed for the reasons adumbrated *infra*. To be noted, points canvassed by learned counsel for appellant would be set out, discussed, dispositive reasoning on the same will also be written (all
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rolled into one *qua* each point) for appreciating what unfurled in the hearing/for the sake of convenience and such an adumbration of reasons is set out in following paragraph (paragraph 9) as sub paragraphs thereat.

9. An adumbration of the points discussed, discussion *qua* the same and dispositive reasoning are as follows:

9.1. The question as to maintainability of the captioned CMAs is left open as, whether the impugned order would qualify as an order within the meaning of sub-section (3) of Section 16, would be a grey area. In any event, Section 37(2)(a) provides for appeal only if a Section 16(3) plea is accepted but learned counsel contended that impugned order is a refusal to exercise jurisdiction by AT and negating the aforementioned two applications tantamount to accepting R1's plea of amendment or supplement of claim or defence during the course of arbitral proceedings. We find that the appeals, in any event, do not pass muster in the Admission Board and therefore, we have entered upon the legal drill of considering the arguments of learned counsel, leaving open the question of maintainability in appeals in cases of this nature to be thrashed out in a legal drill where there is a full contest post Admission Board.

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9.2. Learned counsel submitted that R1 has a substantive right for filing a counter claim. There is no difficulty in accepting this argument in the light of sub-section (2A) of Section 23 of the A & C Act, which kicked in on 23.10.2015, but, in the case on hand, in the statement of defence styled 'counter' dated 27.11.2023, admittedly, R1 has not made any counter claim. R1 has not reserved his rights to make a counter claim if it becomes necessary. This means that R1 has not exercised his rights under sub-section (2A) of Section 23. Therefore, the argument that R1 has a right to file counter claim, though indisputable, neither cuts ice with us in the Admission Board nor comes to the aid of the appellant in the case on hand.

9.3. As R1 did not make a counter claim in the statement of defence dated 27.11.2023, he took the sub-section (3) of Section 23 route by filing two applications, one seeking permission to file additional statement of defence/cum-counter claim and another to permit filing of seven additional documents. This means that the provisions of sub-section (3) of Section 23 apply in full force. In this context, we deem it appropriate to extract and reproduce sub-section (3) of Section 23 of the A & C Act:



'23. Statements of claim and defence.

1.

2.

3. Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.'

(underlining made by this Court for ease of reference)

A careful perusal of sub-section (3) of Section 23 makes it clear that unless it is agreed to the contrary between the parties, an amendment or supplement to a statement of defence by a respondent before an Arbitral Tribunal can be entertained, but if the Arbitral Tribunal considers it inappropriate to allow the same having regard to the delay in making it, a party cannot amend or supplement his claim or defence. In the case on hand, a careful perusal of the impugned order makes it clear that it is this limb (the underlined part in the extract *supra*) of sub-section (3) that has been brought to the fore and exercised emphatically by AT. This is adequately articulated by AT in the penultimate paragraph of the impugned order which reads as follows:

'I find force in the submission made by the learned counsel for the claimant considering the fact that by order dated 22.02.2024 itself, the Tribunal made it clear that the issues would be framed and that the trial would proceed in the matter. Consequent thereto, the respondents have also filed their



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admission and denial of documents. Thereafter, *vide* order dated 27.02.2024, the issues was framed and the trial was fixed on 02.04.2024. On 02.04.2024, the matter was adjourned at the request of the respondent. Thereafter the matter was again posted on 29.05.2024, however, on 27.05.2024 the respondent sought for an adjournment stating that he needs to engage an another counsel. Considering the same, the matter was adjourned to 19.06.2024 for cross-examination of claimant witness. In this background considering that timelines have already been fixed and the respondent has been seeking for time repeatedly and not proceeded with the trial in the matter, this application cannot be entertained at this stage. Hence, the matter ought to proceed. This application stands rejected.'

The chronology set out in tabulation *supra* and trajectory of matter before AT persuades us to say that we find no error in the approach of AT.

9.4. Learned counsel pressed into service **NHAI vs. Transstroy India Ltd.**¹ for the proposition that a liberal view has to be taken with regard to making of counter claims. This CAD is of the respectful view that **Transstroy** does not come to the aid of the appellant as it is clearly distinguishable on facts. On facts, **Trannstroy** is a matter where a partial award was made and the partial award was assailed in a Section 34 Court (Delhi High Court) and the order made by the Section 34 Court was carried to Hon'ble Supreme Court. Instant case is not one of partial award. Be that

¹ (2022) 15 SCC 91
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as it may, another distinct factor as regards **Transstroy** is, in **Transstroy**, Hon'ble Supreme Court has clearly noticed and recorded the obtaining factual position (in that case) that there was no delay at all on the part of the counter claimant, viz., National Highways Authority of India. This is articulated in paragraph 41 of **Transstroy** and the relevant portion of paragraph 41 reads as follows:

'41. At this stage, it is required to be noted that as such there was no delay at all on the part of NHAI initially praying for extension of time to file the counterclaim and/or thereafter to file application under Section 23(2-A) permitting it to place on record the counterclaim. In the facts and circumstances of the case, we are of the opinion that not permitting NHAI to file the counterclaim would defeat the object and purpose of permitting to file the counterclaim/set-off as provided under Section 23(2-A) of the Arbitration Act, 1996.....'

9.5. Learned counsel, thereafter, pressed into service, **National Thermal Power Corporation Ltd. vs Siemens Atkeingesellschaft²**. We are of the considered view that **Siemens** would also not come to the aid of appellant as it was rendered prior to 23.10.2015. To be noted, **Siemens** was rendered by Hon'ble Supreme Court on 28.02.2007. Prior to 23.10.2015, there was no Section 29A in the A & C Act. Section 29-A of A & C Act puts in place a timeline for Arbitral Tribunals and makes it very clear that

² (2007) 4 SCC 451
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Arbitral Tribunals (Domestic Arbitrations) should make awards within a period of twelve months from the date of completion of pleadings, *i.e.*, 'completion of pleadings' within the meaning of sub-section (4) of Section 23 of A & C Act.

9.6. As regards Section 29-A of A & C Act, about which, there is allusion *supra*, if an Arbitral Tribunal does not make an award within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23, the mandate of Arbitral Tribunal snaps. Therefore, an Arbitral Tribunal is under a statutory compulsion *i.e.*, a statutory mandate, to render the award within this 12 months timeline. We are acutely conscious that this 12 months is extendable by another six months, but, that is by consent of the parties and we are also acutely conscious that the mandate that snaps can be resuscitated, but, that can be only by way of a judicial order to be made by a Court under Section 29A(4) of A & C Act, but the bottomline is, an Arbitral Tribunal should make an award within twelve months from the date of completion of pleadings within the meaning of Section 23(4) and this is the position before AT on the date of impugned order. It has not changed today either. Parties consenting for extending timeline by six months, resuscitation by judicial

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order (post such six months or parties not consenting for such extension as the case may be) were/are all in the nature of windows and venturing into the same tantamount to venturing into the realm of surmises and conjectures.

9.7. As a sequitur to the previous point, the discussion takes us to the question as to what is the date of completion of pleadings within the meaning of sub-section (4) of Section 23 which reads as follows:

'23. Statements of claim and defence.

1.
2.
3.

(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.'

To be noted, sub-section (4) of Section 23 also was brought into the statute book on 23.10.2015 alongside Section 29-A. In the case on hand, we need to know the date on which the learned Arbitrator received notice in writing regarding his appointment. The chronology set out in tabulation in paragraph 7, *supra*, will make it clear that the Arbitrator has received the Section 11 Court order in August of 2023. To be noted, we had the benefit of the learned Arbitrator on the video conference platform (at our request for this purpose) and the learned Arbitrator confirmed that he received it in



August of 2023, though the date of receipt with exactitude and specificity was not readily available. This means that at the highest, it can be 31.08.2023 which is a Thursday. This also means that six months therefrom elapsed on 29.02.2024. As six months from the date of completion of pleadings within the meaning of Section 23(4) had elapsed on 29.02.2024, twelve months would start running from 01.03.2024. We are also conscious of judicial views that completion of pleadings within the meaning of Section 23(4) would include reply statement, if any. This means that if the counter claim is allowed, that would become a claim, by itself, and a statement of defence by the claimant to the counter claim would also come within the sweep of Section 23(4), but unfortunately, for the appellant before us, the first effort to file a counter claim was made only on 04.07.2024 well and truly after the six months period had elapsed. Therefore, if the parties to a contract are allowed to adopt this course, it will completely dilute the timeline *qua* Section 23(4) and 29A which were brought into the statute book *qua* A & C Act on and from 23.10.2015. Therefore, we are of the view that if the applications of R1 to file an additional statement of defence/cum-counter claim and permission to file seven additional documents had been made prior to 29.02.2024, the scenario may well have been different. We



leave it at this as we do not want to delve into hypothetical situations.

However, we deem it appropriate to mention this as such issues may come up in other cases and there, this window may come to the aid of all parties concerned.

9.8. At this juncture, we deem it appropriate to write that timelines *qua* A & C Act have to be applied very rigidly. Comprehensive view of the eco-system of the statute, *i.e.*, A & C Act, will make it clear that timelines have been prescribed at every stage and therefore, timelines are sublime legal philosophy underlying the statute and are also salutary principles guiding A & C Act. To expatiate a little on this, we deem it appropriate to say that timelines have been prescribed for completion of pleadings, for award to be rendered by AT within a period of twelve months from the date of completion of pleadings (albeit with the option to extend it by six months by consent of parties and to resuscitate the mandate by a judicial order), a consequence of snapping of mandate is provided, if award is not made within twelve months. Thereafter, if the award is to be challenged under Section 34, the same has to be done within three months from the date on which the party making the Section 34 application, received the arbitral award or in cases where a request is made under Section 33, the date on

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which the request was disposed by the Arbitral Tribunal. Suffice to say, it is three months for the protagonist of a Section 34 petition. This is *vide* sub-section (3) of Section 34. The proviso to sub-section (3) to Section 34 puts in a cap *qua* condonation of delay and the cap is of 'further 30 days'. Therefore, beyond three months and 30 days from the date of receipt of award, a party cannot challenge an arbitral award. In this regard, we deem it appropriate to remind ourselves that Hon'ble Supreme Court, in **Union of India vs. Simplex Infrastructures Ltd.**³, has made it clear that even one day delay beyond three months and 30 days is not condonable. Thereafter, in a recent judgment in **Government of Maharashtra vs. Borse Brothers Engineers and Contractors Pvt. Ltd.**⁴, Hon'ble Supreme Court has extended this principle to the Section 37 Court also.

9.9. We find that the timeline under Section 29-A has a window for extension. As already alluded to *supra*, the 12 months timeline can be extended by a further period of six months by consent of parties and thereafter, the mandate of the AT which snaps, can be resuscitated by a judicial order of the Court under Section 29A(4), about which also, there is

³ (2017) 14 SCC 225

⁴ (2021) 6 SCC 460



allusion in paragraph 9.6, *supra* but the point is, there is no such window as regards Section 23(4).

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9.10. In this regard, we also notice the march of law, *i.e.*, the trajectory the statute has taken. The trajectory the statute has taken is evident from the amendment to Section 29-A. Section 29A, when originally inserted on 23.10.2015 *vide* Act 3 of 2016, prescribed the date on which the AT entered upon reference, as the reckoning date for computing twelve months but after the amendment which kicked in on 30.08.2019 *vide* Act 33 of 2019, the onus was pushed to the parties by saying that twelve months would commence or the clock would start ticking from the date of completion of pleadings. In other words, Section 29A, when it originally kicked in on 23.10.2015, put the onus on the Arbitral Tribunal as regards twelve months timeline. Subsequent amendment *vide* Act 33 of 2019 which kicked in on 30.08.2019, pushes the onus from that of the Arbitral Tribunal to the parties. This means that the trajectory of A & C Act is one that puts the parties also on a timeline and all this is, with the objective of expeditious disposal so as to make arbitration as an efficacious Alternative Dispute Resolution (ADR) mechanism.



10. We make it clear that in the adumbration *supra*, in each of the points we have rolled into one, the point, the discussion of the same and given our dispositive reasoning as already alluded to elsewhere *supra* in this order. We also make it clear that notwithstanding myriad grounds raised in the two memoranda of grounds of appeal *qua* captioned CMAs, the captioned CMAs were argued in the Admission Board on the aforementioned points and therefore, the aforementioned points which were canvassed have been discussed and we have given our dispositive reasoning. To put it differently, we have not embarked upon a legal drill of going into each one of the myriad grounds set out in the memoranda of grounds of appeal.

11. Learned counsel repeatedly emphasised on the point that R1 is without remedy *qua* counter claim. We make it clear that there are two small windows for R1 in this regard. One window is, AT is not bound either by Civil Procedure Code or by Evidence Act and therefore, it is open to AT to entertain any semblance or shade of counter claim content averred in the counter *i.e.*, statement of defence dated 27.11.2023. We refrain from expressing any view on this as all this is obviously the autonomy of AT



which, in any event, cannot travel beyond pleadings. The second window is, if the parties opt for settlement in the light of Section 30 of A & C Act, AT can encourage settlement notwithstanding this judgment made by this CAD.

Ergo, the sum sequitur of the narrative, discussion and dispositive reasoning is, both the captioned CMAs fail and the same are dismissed. Consequently, captioned CMPs thereat also perish with the CMAs and the same are also dismissed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
24.07.2024

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M. SUNDAR, J.

and

GOVINDARAJAN THILAKAVADI, J.

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Common judgment in
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