



WEB COPY

CMA.No.418 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.418 of 2024

and

C.M.P.No.4427 of 2024

Union of India,
Rep. by Chief Engineer (FY),
Hyderabad – 500 003.

(Now above appellant having been disbanded
and the functions were transferred to)

Union of India,
Rep. by Chief Engineer,
Military Engineer Services,
Chief Engineer Chennai Zone,
Island Grounds, Chennai – 600 009.
Rep. by Authorized Officer,
Angad, IDSE, EE, Garrison Engineer,
Wellington (Nilgiris).

[Cause title accepted vide Court order
dated 01.11.2021 made in CMP.No.22254
of 2023 in CMA.Sr.No.109318 of 2023]

... Appellant

Vs.



M/s.Shree Ganesh Constructions,
No.34C, T.D.K.Pillai Road,
Coonoor – 643 102.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 37(1) of the Arbitration and Conciliation Act, 1996, to set aside the decree and judgment dated 13.10.2022 made in AOP.No.46 of 2018 on the file of the District Court of Nilgiris at Udthagamandalam, confirming (refusing to set aside) award dated 13.11.2017 and Rectification final award dated 19.12.2017 passed by the Sole Arbitrator in Arbitration Dispute pertaining to CA No.CE(FY)/HYD/AVD/24 of 2010-2011.

For Appellant : Mr.A.Murugan

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

Challenge in this appeal is to the order of the learned District Judge, Udthagamandalam passed in exercise of jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996.

2. The proceedings before the learned District Judge emanated in the following background: The appellant had entrusted a work of laying road with the respondent on 07.11.2010 and the work ought to have been



completed within a period of six months that is on or before 6th May 2011.

An extension of three months was granted and that came to an end on 04.08.2011. However, the respondent completed the work on 27.01.2012.

After completion and handing over, the respondent had made a claim which was referred for arbitration to the Arbitrator appointed by the appellant.

3. The claims of the appellant were under five heads. The Arbitrator who is a technically qualified person had discussed each and every claim and had accepted certain claims and rejected some of them. The claim No.1 which related to the work done bills was accepted partially and an award of Rs.35,38,671.62/- was made under claim No.1. Claim No.2 which related to unnecessary expenses to the tune of Rs.40,31,860/- was rejected in toto. Claim No.3 was Bank interest payment for a period of six months. Though the Bank interest was claimed, the Arbitrator awarded only 8% Simple Interest and which worked out to Rs.14,27,264/-. On Claim No.4, which related to the administrative expenses, the Arbitrator awarded a sum of Rs.1,00,000/- as a consolidated sum.

4. Since the Arbitrator in the main award did not consider the counter



claim made by the Union of India, an application was filed by the Union of India under Section 33 of the Arbitration and Conciliation Act which came to be disposed of by the Arbitrator on 19 December 2017. The original award was passed on 13 November 2017. Aggrieved the Union preferred an application under Section 34 before this Court and the same was returned by this Court on the ground of jurisdiction and hence the instant original petition before the District Judge, Udthagamandalam.

5. Before the learned District Judge several grounds were urged and the learned District Judge found that most of the grounds are grounds that could be raised in an appeal under Section 96 of the Code of Civil Procedure as against the original decree of a Court. The learned District Judge pointed out the limited jurisdiction of the Courts under Section 34 and examined the matter in the light of the judicial pronouncements which set out the scope of the proceedings under Section 34. The learned District Judge has come to a conclusion that none of the grounds urged will fall within the eight pigeon holes enumerated under Section 34. On the said finding the learned District Judge dismissed the award. Hence, this appeal.



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6. We have heard Mr.A.Murugan, learned counsel appearing for the appellant.

7. Mr.A.Murugan, learned counsel appearing for the appellant would strenuously contend that the award is perverse, in as much as, it does not take into account the delay in completion of the work on the part of the respondent. He would also point out that the contractor did not seek extension beyond 04.08.2011.

8. The very same grounds were urged before the Arbitrator and the Arbitrator had given reasons for rejecting the contentions of the Union and granted an award in favour of the respondent. Those grounds cannot be re-agitated in a Section 34 application. We find that the learned District Judge has examined the contentions in the light of the provisions of the Section 34 and has reached a plausible conclusion, which cannot be interfered with by us exercising jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996.



9. We do not see any merits in this appeal. The appeal therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
07.03.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order

To

The District Judge,
Court of Nilgiris, Udhagamandalam.



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and
R.SAKTHIVEL, J.

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