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OSA(CAD).Nos.161 & 164 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2024

CORAM:

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

OSA(CAD).Nos.161 & 164 of 2023
and
C.M.P.Nos.28201 & 28262 of 2023

The Tamilnadu Civil Supplies Corporation,
Rep. by its Managing Director,
No.12, Thambuswamy Salai,
Kilpauk, Chennai - 600 010.

...Appellant in both appeals

Vs.

M/s.Lakshmi Export,
No.408, Rangai Gowda Street,
2nd Floor, Kandasamy Shopping Centre,
Coimbatore - 641 001.

...Respondent in OSA(CAD).No.161 of 2023

Sree Bhuvaneswari & Co.,
No.206, Govindappa Naicken Street,
Chennai - 600 001.

...Respondent in OSA(CAD).No.164 of 2023

Common Prayer: Original Side Appeals filed under Section 13(1) of the Commercial Courts Act r/w. Section 37 of the Arbitration and Conciliation Act, 1996, against the order and decretal order dated 15.06.2023, passed in O.P.No.780 of 2017 & 927 of 2017.



For Appellant in both appeals : Mr.M.K.Kabir, Senior Counsel
for Mr.K.Raghuraman
For Respondent in both appeals: Mr.G.Karthikeyan for
Mr.C.D.Sugumar

COMMON JUDGMENT

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

Aggrieved by the dismissal of its original petitions filed under Section 34 of the Arbitration and Conciliation Act 1996, challenging the awards passed by the Arbitrator, the Corporation is on appeal. The original petitions have been dismissed solely on the ground that the same has been filed beyond the statutory period prescribed under Section 34 of the Arbitration and Conciliation Act, 1996.

2.The brief facts that are necessary for disposal of the appeals are as follows:-

The appellant entered into contract for procurement and supply of Toor Dhal and Urid Dhal with the respondents on 11.02.2010 and 30.12.2010. Earnest money of Rs.38,55,000/- & Rs.52,00,000/- was deposited with the petitioner. After the supplies were completed, of course

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with a delay, dispute arose on payment of final bills as well the retention of the earnest money that was deposited with the appellant.

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3. These matters were referred to Arbitration and the sole Arbitrator passed an award in favour of the respondents on 29.09.2015. The awards were not challenged immediately. However, the appellant sought for certain corrections in the award subsequently and since the respondents had no objection for corrections being carried out, the Arbitrator passed additional awards by entertaining an application under Section 33 of the Arbitration and Conciliation Act with the consent of the respondents on 20.06.2017 and 28.08.2017. On the additional awards / corrected awards being passed, the appellant filed application under Section 34 within the time allowed from the date on which the applications under Section 33 were disposed off and an objection was raised before the learned Single Judge, who heard the application under Section 34 that the applications are barred by limitation and the correction itself was carried out beyond the period of 30 days prescribed under Section 33.



4.The appellant had relied upon the judgment of the Hon'ble Supreme Court in *Ved Prakash Mithal and sons Vs. Union of India* reported in **2018 SCC Online SC 3181** and M/s.USS Alliance Vs. The State of Uttar Pradesh and others in SLP(Civil)Nos.23676 of 2022 dated 06.01.2023 in support of its contention that once a request under Section 33 has been disposed of by the Arbitrator, a limitation for challenge under Section 33 would commence only from the date of disposal of the request under Section 33.

5.The learned Single Judge was, however, of the view that the benefit of the extended period limitation namely, from the date of disposal of the request under Section 33 would apply only in cases where the application under Section 33 was made within 30 days prescribed and not beyond that even if it is with the consent of the other parties. On the said conclusion, the learned Single Judge held that the applications under Section 34 are beyond the period of 120 days allowed under Section 34 and hence, they cannot be entertained. Eventually, the original petitions are stood dismissed.

6.We have heard Mr.M.K.Kabir, learned Senior Counsel appearing



for the appellant and Mr.G.Karthikeyan, learned Senior Counsel for the respondents.

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7.The facts are admitted. The fact that the awards were corrected adopting the procedure prescribed under Section 33 on 20.06.2017 and 20.08.2017 is not in dispute. The respondents had, in fact, consented for the Arbitrator to exercise the power under Section 33 therefore, the question that would loom large before us is as to whether the extended period limitation would be available only when power under Section 33 is exercised within 30 days period provided in it or it would extend even to cases where a correction of the award is made after the expiry of the period of 30 days with the consent of the respondent. Section 33 of the Arbitration and Conciliation Act reads as follows:-

"33. Correction and interpretation of award; additional award.- (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties."

A reading of Section 33 would show that a request under 33 can be made



either within 30 days from the date of receipt of the arbitral award or within a further time if agreed upon between the parties.

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8.As we already pointed out, there is no dispute regarding the fact that the respondents agreed for an invocation of the powers under 33 beyond the expiry of the 30 days period that was available. Section 34(iii), which is relevant for our purposes reads as follows:-

“34.(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

A reading of Section 34 would show that an application for setting aside the award could be made within 90 days from the date of receipt of the award or within 90 days from the date of disposal of the request under Section 33 of the Arbitration and Conciliation Act, 1996.



9. Section 34(3) of the Arbitration and Conciliation Act, 1996 does not make a difference between a request made within 30 days or request made within the extended period agreed between the parties. Once the power under 33 of the Arbitration and Conciliation Act, 1996 is exercised by the Arbitrator, the 2nd part of Section 34(3) of the Arbitration and Conciliation Act, 1996 would automatically come into play and the time limit to file an application under Section 34 of the Arbitration and Conciliation Act, 1996 would be within 90 days from the date of disposal of the request under Section 33 of the Arbitration and Conciliation Act, 1996. Any other interpretation, in our considered opinion, would be doing violence to the provisions to intendment of the legislature. We are therefore, unable to sustain the order of the learned Single Judge. The distinction made on the disposal of the request under Section 33 of the Arbitration and Conciliation Act, 1996 is artificial and is not permitted under law.

10. These Original Side Appeals are therefore, **allowed**. The order dated 15.06.2023, dismissing the original petition under Section 34 of the Arbitration and Conciliation Act, 1996 are set aside. The original petitions are restored to file and they are remitted to the learned Single Judge for



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being disposed of in accordance with law *de hors* the question of limitation.

No costs. We request the learned Single Judge to dispose of the Original

Petitions at an early date.

(R.S.M., J.) (R.S.V., J.)
16.02.2024

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Nuetral Citation :No

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