



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.07.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1342 of 2013

M.Chinnakannu

... Appellant

Vs.

Tamilnadu Water and Drainage Board,
Represented by its Executive Engineer,
Rural Works Division I, Tiruchirappalli,
Cantonment, Tiruchirappalli-1

...Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 39(1)(iv) of the Arbitration Act, 1940, against the order passed in Arbitration O.P.No.22 of 2011 dated 22.03.2013 on the file of the Principal District Court, Tiruchirappalli.

For Appellant : M/s.S.Vinayak

For Respondent : Mr.R.Saheesh,
Standing Counsel

JUDGEMENT

The present Civil Miscellaneous Appeal is filed against the order passed in Arbitration O.P.No.22 of 2011 dated 22.03.2013 on the file of the Principal District Court, Tiruchirappalli.



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2. The contractor is the Appellant herein. The contention of the Contractor is that the respondent without referring the matter to the arbitration has unilaterally fixed the contract amount and directing the Contractor to pay the said amount. The Tribunal has considered the issue and dismissed the claim of the Contractor on the ground of limitation.

3. The Contractor had issued lawyer notice on 29.03.1990 and then ought to have filed the arbitration petition within three years period, since the present arbitration petition is beyond three years period the Tribunal had dismissed the case on the ground of limitation. But it is seen that the period of limitation would start from the date of notice requesting to refer the case to arbitration. The said lawyer notice dated 29.03.1990 was issued for some other reason and not with the request to refer the case to arbitration. But the Tribunal has taken the said notice as if the Contractor had requested to refer for Arbitration.

4. Further it is seen that the Contractor had issued another lawyer notice dated 23.08.1997 and it is in this notice the Contractor had requested to refer the case for arbitration. Thereafter had filed the Arbitration Original Petition immediately. When there is no indication in the first notice to refer



the matter to Arbitration, then limitation will not start from the first notice dated 29.03.1990 but would start from 23.08.1997.

5. It is seen that the contract was issued in the year 1988 and the same ought to have been completed within a period of 2 months and since the contract could not be completed, extension was granted. In spite of extension the Contractor did not complete the contract. Hence, the respondent has fixed the loss on the contractor. However, while fixing the loss, the respondent has not referred the matter to arbitration for quantification of loss, but had unilaterally quantified the amount.

6. By taking note of the fact that the contract was in the year 1988-1989, referring the matter again to the arbitration at this point of time would be an unnecessary exercise. Further, it is seen that, already the respondent had quantified the amount as Rs.2,14,738.07, the contractor had paid Rs.1,06,895/- and the balance amount to be recovered is Rs.1,07,843/-. Since the respondent has recovered more than 50% of the amount, this Court is restricting the balance amount to Rs.25,000/-. Therefore, the Contractor is directed to pay a sum of Rs.25,000/- within a period of Four weeks from the date of receipt of a copy of the order. On such receipt, the respondent shall record full quit and complete the proceedings.



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7. With these directions, this Civil Miscellaneous Appeal is

allowed. No Costs.

04.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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1. The Tamilnadu Water and Drainage Board,
Represented by its Executive Engineer,
Rural Works Division I,
Tiruchirappalli,
Cantonment,
Tiruchirappalli-1
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Order made in
C.M.A(MD)No.1342 of 2013**

04.07.2024