



C.M.A.(MD)No.606 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD)No.606 of 2019

and

C.M.P.(MD)No.7420 of 2019

The Director,
Central Marine Fisheries Research
Institute,
Post Box No.1603,
Ernakulam North Post,
Cochin,
Kerala.

... Petitioner / Appellant / Respondent No.1

Vs.

1.Wilson Fdo

...Respondent No.1 / Respondent No.1 /
Petitioner

2.M.S.Madan

... Respondent No.2 / Respondent No.2 /
Respondent No.2

3.The Traffic Manager,
Tuticorin Port Trust,
Thoothukudi.

... Respondent No.3 / Respondent No.3 /
Garnishee

PRAYER : Civil Miscellaneous Appeal is filed under Section 37(1) of Arbitration and Conciliation Act, 1996 to set aside the fair and decreetal



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order passed in Ar.O.P.No.253 of 2013 dated 11.04.2019 on the file of the Principal District Court, Tuticorin.

For Appellant : Mr.B.Rajesh Saravanan

For R-1 : Mr.V.R.Shanmuganathan

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the respondent No.1 in Ar.O.P.No.253 of 2013 on the file of the Principal District and Sessions Court, Tuticorin.

2. The above said arbitration proceedings were initiated by the 1st respondent herein on the ground that they have entered into an agreement with the respondents on 08.12.2010 for carrying out repair works at 43' Boat Cadalmin-IV, CMFRI, Tuticorin Research Centre, Tuticorin. As per Clause 14 of the said agreement, in case of any breach committed by any one of the parties, the matter will be referred for arbitration. Clause 14 of the said agreement is extracted as follows:



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“14. Dispute Settlement:-

If over the works, any dispute arises between the two parties, relating to any aspects of this Agreement, the parties shall first attempt to settle the dispute through mutual amicable consultation.

In the event of agreement being breached, the matter will be referred for arbitration by a sole Arbitrator not below the level of an Inspector in the Mercantile Vessel / Boat, Department of Fisheries, Tamil Nadu to be appointed by the first party. The Arbitration will be conducted in accordance with the Arbitration and Conciliation Act, 1996. The decision of the Arbitrator shall be final and binding on both the parties.

The cost of expenses of the arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation etc. of its proceedings as also fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.

The decision of Director, Central Marine Fisheries Research Institute, Kochi (competent authority of the Institute) shall be final and binding on the contractor / Agency in respect of any clause covered under the contract and any matter incidental to the contract.”



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3. According to the claimant in the arbitration proceedings, the authorities of Tuticorin Research Centre, Tuticorin have committed breach of contract and therefore, he had initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 before the Principal District and Sessions Court, Tuticorin in Ar.O.P.No.253 of 2013 and an order was passed in the arbitration on 17.12.2014 dismissing the arbitration proceedings.

4. Challenging the same, the claimant had filed C.M.A.(MD)No. 244 of 2016 before this Court and the appeal was allowed by this Court on 04.09.2018. The operative portion of the said order in paragraph Nos. 12 to 14 is extracted as follows:

"12. The Arbitration OP filed by the appellant for appointment of an Advocate Commissioner to inspect the Boat with the help of qualified Marine Surveyor and assess the extra work done by the appellant and for other reliefs. The said OP was dismissed on the ground that the appellant could not do additional work without written instructions from the first respondent and he has raised bills claiming amounts for



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additional work belatedly i.e after a period of one year from the date of completion of work and he did not make such claim when he submitted three bills for the work done by him as per the agreement. The learned Judge has dismissed the OP without properly appreciating the claim of the appellant and the nature of relief sought for in the Arbitration OP. The appellant is seeking to record additional work done by him by a qualified Marine Surveyor to be inspected along with Advocate Commissioner. Whether the appellant is entitled to the claim or not it is the subject matter of arbitration proceedings to be initiated by the appellant or respondents 1 and 2. The present Arbitration OP is filed for interim relief as per Section 9 of Arbitration and Conciliation Act, the said petition is maintainable.

13. The learned counsel appearing for the appellant contended that the Boat is still lying in dry dock on Tuticorin Old Port Trust for a period of 5 years and the same is not taken to High-seas by the first respondent. The said contention is not disputed.

14. In view of the above reason, the arbitration petition is remanded to the learned Principal District Judge, Tuticorin, directing the learned Judge to appoint an Advocate Commissioner to inspect the Boat along with qualified Marine Surveyor and file a report, within a period of two weeks from the



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date of receipt of this Judgment with a direction to the Advocate Commissioner to complete the inspection with the help of qualified Marine Surveyor, within a period of two weeks thereafter. On receipt of the report, the learned Judge is directed to consider the materials on record, decide the Arbitration OP on merits and pass orders in accordance with law, within a period of two months thereafter.”

5. After remand an Advocate Commissioner was appointed in compliance with the order passed by this Court and based upon the report filed by the Advocate Commissioner, the Principal District Court has passed final orders in Ar.O.P.No.253 of 2013 on 11.04.2019. The operative portion of the order namely, paragraph No. 12 is extracted as follows:

“12. In the result, the Arbitration O.P. is partly allowed.

(i) The 1st respondent shall pay a sum of Rs. 2,50,000/- to the petitioner within a period of one month from the date of this order and the petitioner shall give proper undertaking to refund the same in the event of adverse order passed against him in the Award.



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(ii) The 1st respondent shall hand over the boat to the 3rd respondent / garnishee for proper custody. The 3rd respondent shall maintain the boat and entitle for maintenance charges after appropriate Award passed by the Arbitrator.”

6. Challenging the said award, the present Civil Miscellaneous Appeal has been filed by the 1st respondent in Ar.O.P.No.253 of 2013.

7. According to the learned counsel appearing for the appellant, the order passed by the Principal District and Sessions Court, Tuticorin is clearly beyond the scope of Section 9 of the Arbitration and Conciliation Act, 1996 and therefore the same is liable to be set aside. He had further contended that he alleged additional works carried out by the claim petitioner have not been authorized by the Fisheries Research Institute and therefore he is not entitled to receive any amount from the appellant herein. He prayed for setting aside the order passed in Ar.O.P.No.253 of 2013 dated 11.04.2019.



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8. Per contra, the learned counsel appearing for the 1st respondent had contended that the additional works were carried out by him only after instructions issued by the authority. In fact, in C.M.A.(MD)No.244 of 2016, his entitlement was confirmed but only for finding out the quantum, this Court has remitted the matter back to the District Court. After remand, the District Court has appointed an Advocate Commissioner who has quantified the amount and award has been passed directing the appellant herein to deposit the sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only), that is, the 50% of the claim made by the claim petitioner.

9. He further contended that though he initiated steps for appointing an arbitrator so far they have not taken any steps for the past 13 years to appoint an arbitrator. Therefore, the order passed by the Principal District Court may be sustained.

10. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the 1st respondent and carefully perused the



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materials available on record.

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11. The facts narrated upon by both the counsels will clearly indicate that arbitration proceedings have not been initiated even though the claim petitioner alleges that there is breach of contract. It is the case of the appellant that there is no breach of contract and therefore the question of initiating any arbitration proceedings does not arise. Therefore, it is clear that the claim petitioner namely, the 1st respondent herein has to address the communication to the appellant herein informing that there is a breach of contract and calling upon him to appoint an arbitrator as per the agreement. According to the claim petitioner, he is aged about 80 years and he has to see the colour of the coin since the arbitration proceedings have not been initiated for more than 10 years. In such circumstances, this Court inclined to pass the following order:

i) The order passed in Ar.O.P.No.253 of 2013 dated 11.04.2019 shall be kept in abeyance till 22.07.2024. In case if the appellant does not



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appoint an arbitrator on or before 22.07.2024, despite receiving a communication from the claim petitioner, clause (ii) and (iii) of the order passed in Ar.O.P.No.253 of 2013 dated 11.04.2019, shall stand revived.

ii) The appellant herein is directed to furnish a bank guarantee in favour of the 1st respondent to a tune of Rs.7,00,000/- (Rupees Seven Lakhs only) and it shall be renewed till the completion of arbitration proceedings.

iii) The claim petitioner shall address a communication to the appellant herein to initiate arbitration proceedings on or before 05.07.2024.

iv) The appellant shall appoint an arbitrator on or before 22.07.2024.

v) In case appellant had appointed the arbitrator on or before 22.07.2024, the order passed in Ar.O.P.No.253 of 2013 dated 11.04.2019



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shall stand set aside.

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vi) Setting aside of the orders passed in the arbitration proceedings will not prevent the parties from relying upon the Advocate Commissioner report which was submitted pursuant to the orders passed by this Court in C.M.A.(MD)No.244 of 2016.

12. With the above said observations, this Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, connected civil miscellaneous petition is closed.

21.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The Principal District Judge,
Tuticorin.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J.

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Judgment made in
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