



Arb.Appeal.(CAD)No.18 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.10.2025

Pronounced on :16.10.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

Arbitration Appeal (CAD)No.18 of 2024

and

C.M.P.No.28697 of 2024

The Superintending Engineer,
Pubic Works Department,
New Veeranam Plan.
Chidambaram,
Cuddalore District.
(Present New Address:
The Superintending Engineer,
Water Resources Department,
Vellar Basin Circle,
Cuddalore).

..Appellant/Appellant/Respondent

/versus/

M/s RPP Infra Project Ltd.,
Erode-11,
(Respondent's name formerly known as
M/s RPP Constructions (P) Ltd.,
(Amended as per Order in
I.A.No.799/2022 dated 30.06.2022).

..Respondent/Respondent/Claimant

Prayer: Arbitration Appeal has been filed under 37(1) and (2) of the



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Arbitration and Conciliation Act, 1996 and Section 13 of Commercial Court Act, 2015, praying to set aside the judgment dated 29th August 2023 passed in Arbitration Original Petition No.55 of 2015 on the file of Principal District Court, Cuddalore) confirming the Award dated 27.08.2014 passed by the Hon'ble Mr.Justice K.P.Sivasubramanian(Retired) the Sole Arbitrator.

For Appellant :Mr.Ramanlal, AAG for
Mr.D.Ravichander, Spl.G.P

For Respondent :Mr.V.P.Sengottuvel, Senior Counsel for
Mr.K.R.Nishanth

JUDGMENT

(Order of the Court was made by Dr.G.Jayachandran, J.)

The Public Works Department in the Government of TamilNadu through its Superintending Engineer, Chidambaram, invited tender from qualified contractors on 07.08.1996 for improvements to Vadavar Channel from Reach LS 18/0 km to 21/8 km in Kattumannar Koil Taluk. The value of the work was estimated at Rs.3,93,51,272.50. The time for completion was fixed as 24 months (inclusive of monsoon and irrigation period).

2. M/s RPP Construction (P) Ltd., a Class I Contractor of PWD and CPWD, participated in the tender and its offer was accepted by PWD resulting in agreement dated 22.09.1997.



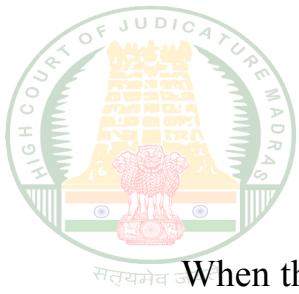
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3. For Convenient sake, wherever necessary, the appellant herein is referred as PWD and the respondent herein is referred as Contractor.

4. The work by the contractor commenced on 01.03.1998. The work was admittedly not completed within 24 months i.e by 29.02.2000. While carrying out the preliminary work of clearing the site, variation between the tender quantities and the quantities present in the site was noticed. Hence, there was change in the design of the proposed channel Section by lowering the bed level by 90 cm. After submitting the consent letter for execution of the work, as per the changed design, the contractor commenced the work in anticipation of approval. PWD proposed a supplemental agreement dated 27.03.2004 to substitute pre cast slabs for side lining instead of brick lining since the good quality bricks were not available.

5. The Contractor completed the work on 15.08.2004 after getting extension of time thrice. The Contractor claimed pending bill with escalation cost of work fixing PWD as responsible for the delay and additional cost for the work done after the change in design and specifications. However, the PWD declined to entertain the request for additional cost and escalation cost.



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When the Contractor sought the appointment of an Adjudicator to resolve the issue, PWD declined the request stating the Arbitration and Conciliation Act, 1996, which came into force before the date of tender agreement, does not contemplate the dispute resolution through an Adjudicator. The contractor, therefore, invoked the arbitration clause in the agreement, sought appointment of an Arbitrator to decide the dispute. However, the Chief Engineer of PWD rejected the request for reference to arbitration, citing that the claim is barred by limitation. Hence, the Contractor, filed Original Petition before the High Court invoking Section 11(6) of the Arbitration and Conciliation Act, 1996, and prayed for the appointment of an Arbitrator to resolve the dispute. The Hon'ble High Court at Madras, allowed O.P.No.109 of 2007 filed by the Contractor, on 20.11.2007 and appointed a former Judge of the Madras High Court as the sole Arbitrator.

6. Before the Learned Arbitrator, the Contractor as claimant made a cumulative claim of Rs.3,63,84,546/- with further interest at the rate of 24% per annum from 01.02.2008 till the date of actual payment. The claims under different heads with specification put under 5 broad heads are as below:-

Summary of claims:

Claim-I



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Payment towards price adjustment for the period under
Extension of time and for additional quantities and
additional items executed =Rs.79,24,824/-

Claim-II

Payments towards interest on the belatedly paid bills for work
done including price adjustment payment. =Rs.1,53,73,497/-

Claim-III

Payment towards compaction allowance for the
conveyed earth =Rs.14,76,736/-

Claim-IV

Repayment of the deduction wrongly made
from the Claimant's Bill =Rs.3,62,592/-

Claim-V

Payment towards the compensation events =Rs.1,12,46,897/-

Total Cumulative Claim as on 31.01.2008 =Rs.3,63,84,546/-

(Rupees Three Crores Sixty Three Lakhs Eighty Four Thousand
Five Hundred Forty Six only)

7. Denying the claim, the PWD filed counter stating that, the
Contractor has not executed the work at the place which was expected to be

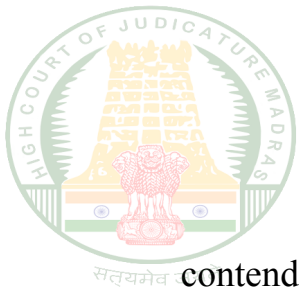


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done. He did not complete the work within the time stipulated in the agreement. Delay in completion of work in time was due to the lack of commitment on the part of the Contractor. The time prescribed for completion of work was 24 months. Whereas, at the end of 24 months, the Contractor completed less than 45% of the work only. The extension of time was granted by the Engineer on condition the Contractor is not eligible for escalation cost. The decision of the Engineer has not been objected by the Contractor by exercising Clause 24.1 of the agreement. In case of any objection to the decision of the Engineer, reference to arbitration should be sought within 14 days under Clause 25.3 of the agreement. The Contractor having failed to exercise the said option in time, cannot question the decision of the Engineer which has become final and not arbitral.

8. Referring to the claims under different heads, the PWD contented that the claim before the Arbitrator under 5 different heads is not *bona fide* and is baseless. It varies and is excessive than the claim, which has been mentioned in the O.P No.107 of 2007 before the High Court. The agreement dated 22.09.1997 speaks about dispute resolution through arbitration. While so, the contractor first sought for adjudication, which is not contemplated under Arbitration and Conciliation Act, 1996. He cannot



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contend that the request for adjudication is to be construed as request for arbitration.

9. The contractor completed the work on 13.08.2004. The defect liability period of one year has ended on 12.08.2005. As per agreement, either party is entitled to bring any claim within 28 days from the expiry of defect liability period. The request for arbitration ought to have been made to the Chief Engineer, PWD, within the said period. Whereas, in this case the Contractor did not make his claim within the said period before the Chief Engineer as contemplated under the agreement. Contrarily, his request dated 20.05.2005 was made to the Executive Engineer, PWD, who is not the competent authority. By the time, the contractor made his request to the Chief Engineer on 08.10.2005, the time prescribed to refer dispute to the arbitrator expired. In order to cover the mistake, the claimant had suppressed his earlier request which he addressed to the Executive Engineer. Therefore, the claim is to be rejected holding that the claim is barred by limitation and not arbitrable.

10. Considering the rival plea, the Learned Arbitrator has framed the following Issues:-



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1. Whether the claim under the Arbitration proceeding is within the period of limitation?

2. Whether the claimant has contested the decision of the Executive Engineer and if so whether such claims before the Arbitral Tribunal are sustainable?

3. Whether the claimant is entitled to price escalation during the extended period?

4. Whether the claimant is entitled to price variation on the execution of the main work as well as additional work executed by them?

5. Whether the delay in completion of the work was due to the claimant or the respondent?

6. Whether the claimant is entitled for compaction allowance at the rate of 15% on the compacted quantity of the conveyed earth?

7. Whether the claimant is entitled to compensation due to the alleged delay in granting approval for additional quantities/works?

8. Whether the deduction of Rs.2,01,342/- is sustainable on the audit objection without notice to the claimant?

9. Whether the claimant is entitled for interest on the amounts allegedly due and on the additional works said to have been executed by the claimant?



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10.To what relief the parties are entitled to?

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11. On considering the oral evidence on behalf of the Contractor/claimant and on behalf of PWD/respondent and on examining the documentary evidence marked as Ex.C-1 to Ex.C-68. Ex.R-1 to Ex.R-9 , the learned Arbitrator passed award on 27.08.2014 as below:-

1.Claim No.I:

Claimant is entitled to a sum of Rs.36,03,645/- with interest at 18% p.a. from 08.10.2008 till date of realisation.

2.Claim No.II:

Claimant is entitled to a sum of Rs.93,66,700/- with interest at the rate of 18% p.a from 31.1.2008 till date of realisation.

3.Claim No.III:

Claimant is entitled to a sum of Rs.8,11,125/- with interest at the rate of 18% p.a from 08.10.2005 till date of realisation.

3.Claim No.IV:

Claimant is entitled to a sum of Rs.2,01,342/- with interest at the rate of 18% p.a from 08.10.2005 till date of realisation.

3.Claim No.V:



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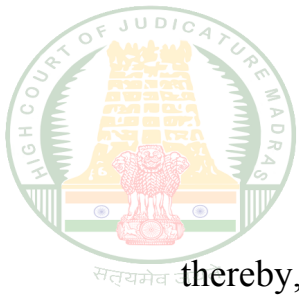
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(a)Idle charges for machineries	:Rs.8,35,000/-
(b)Idle charges towards establishment	:Rs.12,33,480/-
(c)Expenses due to erosion of work	:Rs.23,08,500/-
(d)Interest on retention money	:Rs.19,74,060/-

Total	:Rs.63,51,040/-
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Hence, under this claim the claimant is entitled to a sum of Rs.63,51,040/- with interest at the rate of 18% p.a., from 08.10.2005 till date of realisation.

12. Being aggrieved, the PWD filed Arbitration O.P.No.55 of 2015 under Section 34 r/w Section 65(5) of the Arbitration and Conciliation Act, 1996, before the Principal District Court, Cuddalore, contending that the Arbitrator has no jurisdiction to decide the dispute, which was raised beyond the prescribed period of limitation. Therefore, the arbitral proceedings were not maintainable. As a consequence, the award dated 27.08.2014 is liable to be set aside. It was further contended that the Arbitrator has acted with a partisan attitude and the award does not reflect the contentions raised by the PWD. The issues decided in favour of the Contractor were rendered without assigning adequate reasons. Particularly, the award of interest at the rate of 18% p.a., is beyond the scope of the Arbitration and Conciliation Act, 1996 as well as the terms of the agreement. The Arbitrator erred in awarding interest in addition to escalation cost,



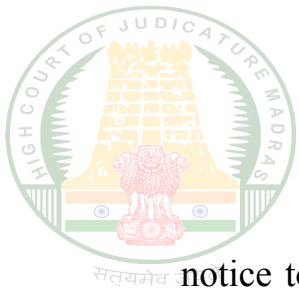
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thereby, enriching the Contractor unjustly.
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13. After hearing the Contractor, the Original Petition filed by PWD was dismissed by the learned Principal District Judge, Cuddalore, holding that the award passed by the Arbitrator was well-reasoned and supported by the sufficient materials. The petition filed by the PWD does not fall within the scope and parameter fixed under Section 34 of the Arbitration and Conciliation Act, 1996.

14. Aggrieved by the dismissal of the said Original Petition confirming the award passed by the sole Arbitrator, the PWD has preferred the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

15. In the Appeal under consideration, it is contended that the award passed by the Arbitrator, without appreciating the correct interpretation of the provisions of the Act, has led to miscarriage of justice. The appellate Court failed to take into account the violation of public policy committed by the Arbitrator. Clause 25.3 of the agreement had fixed 28 days for issuance of



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notice to express the intention for reference of dispute to the Arbitrator and such notice should be addressed to the Chief Engineer having jurisdiction over the work.

16. Admittedly, in this case, the Contractor had not followed the procedure contemplated under Clause 25.3 of the agreement. The letter dated 08.10.2005 addressed to the Chief Engineer for appointment of an Arbitrator, being a time barred request, was rightly rejected by PWD. However, neither the Arbitrator nor the Appellate Court had considered the vital question of law regarding the maintainability of the arbitral proceedings and crucial fact that the delay in completing the work was totally attributable to the non co-operation of the Contractor.

17. The Arbitrator as well as the Appellate Court, without assigning any reasons, shifted the blame on PWD, alleging that by granting extension of time, PWD had agreed to compensate for price escalation and other costs. The direction to pay interest at the rate of 18% p.a., is illegal and not sustainable. The said portion of the award is not in conformity with the terms of contract between the parties and it is opposed to the public policy of the State. The PWD never agreed for price escalation, while extending the period

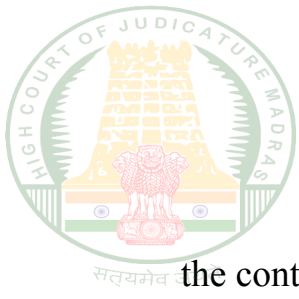


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for completion.
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18. The letter correspondence between the Contractor and the PWD establishes the fact that the delay in completion of work was due to lack of commitment on the part of the Contractor. Despite sufficient proof, the Arbitrator held that the delay in completion of work was due to non co-operation of the PWD. The work executed by the Contractor in anticipation of approval of a supplementary agreement, ought not to have been relied upon by the Arbitrator.

19. Hence, the appellate Court erred in relying upon the statement of the Contractor to claim additional amounts for strengthening the vulnerable portion of the bank in order to avoid breaches during the monsoon. The statement of the Contractor that he expected approval for conveying earth work from a borrow area in Veeranam tank and carried out the work due to “functional necessity” ought not to have been taken into account to enrich the Contractor beyond the scope of agreement and terms of



the contract.
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20. Extension of time was accorded to the contractor after specifically informing him that the extension was granted only for completion of the project and not for any financial advantage. The project, which was to be completed within 24 months, was dragged for years together under one pretext or another and was actually completed only on 15.08.2004. For his own fault, the Contractor demanded additional charges with interest. The Arbitrator as well as the Principal District Judge without any basis has allowed the claim. While seeking extension of time, the Contractor never insisted on price escalation or any other advantage. While so, without any reason, after committing the delays in completion of work, the Contractor sought escalation costs with interest and the Arbitrator as well as the appellate Court had erroneously acceded the relief contrary to the public policy.

21. The work carried out by the Contractor without a specific request from the Department and without consent of the field Engineer does not entitle to any payment. All additional work is alleged to have been done



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by the contractor, without written request from the PWD, ought to have been rejected. Contrarily, the Arbitrator had rejected only a few claims that were not backed by the agreement but allowed the rest of the claim, even though they were unsupported by any request from the PWD.

22. The learned Additional Advocate General appearing for the appellant submitted that the award passed by the Arbitrator is perverse and contrary to public policy. While so, the appellate Court, without proper appreciation of the evidence and other materials placed on record by the PWD, had confirmed the award and dismissed the application filed by the PWD. Hence, for the grounds raised above, the award of the Arbitrator has to be set aside.

23. In short, the contention of the appellant/PWD is that, in the absence of any approval or request for transporting earth work from outside, for completion of the work, the Contractor's actions are contrary to the principles of law. The cost for laying of pre-cast slabs and substitute bricks which was carried out by the Contractor, on his own discretion and not at the request of PWD, cannot be mulched on the PWD. The Contractor completed



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the work with much delay only after being put on notice that he would forfeit the deposits and also be liable for liquidated damages. In these circumstances, the Arbitrator erred in passing the award in favour of the Contractor.

24. Per contra, the learned counsel appearing for the respondent submitted that the Arbitrator had gone in detail with each of the issues and assigned reasons for accepting or for rejecting the claim. The communication between the Contractor and PWD, which are marked as Ex.C5 to Ex.C-42A clearly show that, the letters for seeking extension of time had explicitly stated the reasons. Based on the reasons, such extension of time was granted by PWD. The conduct of the PWD was the cause for delay. The admissions of the site Engineer and the report given to the Chief Engineer were taken note by the Arbitrator to conclude that the delay in completing the work was due to the conduct of PWD.

25. In respect of payment of escalation cost for price adjustment, on the additional work, the witness for the PWD admitted before the Arbitrator that the claimant was entitled for price escalation during the



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extended period. From the records, the Arbitrator found that there was wilful retention of money by the PWD and the same was released belatedly, which warrants payment of interests. While Clause 43.1 of the contract provides for interest at the rate of 10% for the belated payment between 28 days and 70 days, after the work defect liability period, the claimant is awarded interest at the rate of 18% p.a.

26. Being a works contract, which is commercial in nature, the claimant though entitled for interest at the rate of 24% p.a. the learned Arbitrator restricted the rate of interest to 18% p.a., which is reasonable and within the limits prescribed under the RBI rate of interest in terms of the agreement.

27. The learned counsel appearing for the appellant relying upon the judgment of the Hon'ble Supreme Court in ***Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation reported in [2022(9) SCC 286]***, wherein the Hon'ble Supreme Court has explained the usage of expression “unless otherwise agreed by the parties” emphasised that when the parties have agreed for 10% p.a., interest, in case of delayed payment, the Arbitrator cannot substitute it with 18% p.a. interest.



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28. The first contention of the appellant/PWD is that the reference of the dispute to the Arbitrator is barred by limitation. Referring to the terms of agreement, it is contended by the learned counsel appearing for the appellant that the failure on the part of the contractor to make a written request to the Chief Engineer, PWD for reference to the Arbitrator within 14 days, goes to the root of the matter.

29. This Court is unable to countenance the above submission, since the records reveal that ever since there was delay in payment, the Contractor has been repeatedly requesting PWD for release the payment of bills. When the PWD officials were not inclined to act as per the terms of the agreement, the Contractor had requested the Executive Engineer, PWD, to refer the matter to the adjudicator as per the terms of the agreement. However, the said request has been arbitrarily declined by the PWD, citing that, after enactment of Arbitration and Conciliation Act 1996, the scope of appointing the Adjudicator under the new Act, is not permissible.

30. Infact, when the terms of the agreement were signed, though it



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was after Arbitration and Conciliation Act, 1996 came into force, the agreement only refers the old Arbitration Act, 1940. When the PWD was aware of the dispute and the Contractor was inclined to resolve the dispute through alternate dispute resolution, there was no reason for not constituting an Arbitral Tribunal as per the agreement. This has forced the Contractor to approach the High Court to seek a direction for appointment of an Arbitrator. The Arbitrator in this case was appointed by the High Court, after hearing the PWD and on considering the provisions of the agreement.

31. There is no infirmity or illegality in the appointment of the sole Arbitrator to adjudicate the dispute, which has been placed before the High Court by the Contractor and only on being satisfied with the nature of the dispute, the Arbitrator has been appointed and he has adjudicated the dispute as per the provisions of law. It is unreasonable for the PWD to keep on agitating about the appointment of an Arbitrator, when the agreement speaks about the dispute redressal through Arbitrator. In this case, since the PWD failed to appoint the Arbitrator, on request of the Contractor, he has resorted to legal recourse and got remedy of the Arbitrator. Before the Arbitrator, the Contractor has placed records to substantiate his claim. The arbitrator has



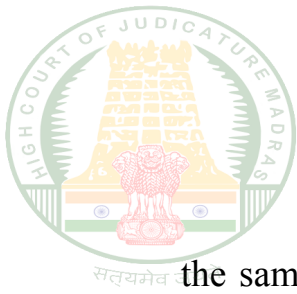
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gone through the records threadbare and given reasons for allowing the few claims as well as for rejecting certain claims.

32. It is apparent from the records that the Contractor was not able to complete the work due to the attitude of the PWD officials, who had floated the tender without a proper assessment of the site. Thereafter, when the field was clear and the site was assessed, they found that the specifications mentioned in the tender and the quantities required are inadequate. The PWD have voluntarily given the first extension of time and revised the designs and requirements to enable successful and effective completion of the project. Having extracted additional work it is inappropriate on the part of the PWD to plead that there was no written agreement for the additional work. It is not the case of the PWD that the contractor has not done the additional work, but their only pleading is that the additional work carried by PWD was not on the written request or approval by the Site Engineer.

33. It is to be noted that all the work done on behalf of the PWD is to be supervised and recorded in the M-Book by the responsible officer and



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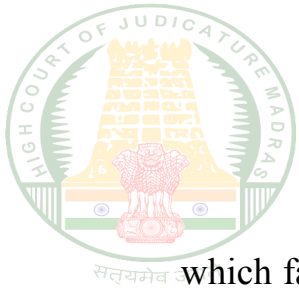
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the same has to be supervised periodically by the Superior Officer. For the reason best known, the PWD had not thought fit to place the M-Book before the Arbitrator to disprove the claim of the contractor. Infact, they admitted that the Contractor completed the work. They only harp on delay in requesting to refer the matter for arbitration. This plea is flimsy and baseless.

34. The Arbitrator having considered all these facts had passed the award assigning the reasons, that are legally justifiable and sustainable.

35. The next contention raised by the learned Additional Advocate General on behalf of the appellant is regarding the rate of interest imposed for delayed payment.

36. Admittedly, this is a money dispute arising out of a commercial contract. The Contractor had claimed 24% interest, whereas the Arbitrator has filed 18% p.a., excluding the period between 28 days, the time fixed for raising dispute and 70 days the day on which the request for appointing Arbitrator made by the Contractor. As per the terms of the agreement, for delayed payment 10% p.a., interest is chargeable. The delay meant in this Clause is not a perpetual and unreasonable delay. In this case, for the period



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which fall under reasonable delay, the Arbitrator had excluded and interest is levied only for the period thereafter. He had fixed 18% p.a., as interest taking into consideration the nature of the contract and RBI rate of interest. Hence, we find no perversity in fixing 18% p.a interest.

37. While so, the appellate Court being aware of its limitation under Section 34 of the Arbitration and Conciliation Act, 1996, had confirmed the award and dismissed the appeal. Under Section 37 of the Arbitration and Conciliation Act, 1996, the scope of the High Court to interfere with the award of the Arbitrator and the order of the appellate Court passed under Section 34 of the Arbitration Act, 1940 is well-determined by the Hon'ble Supreme Court in *Somdatt Builders – NCC -NEC(JV)v. National Highways Authority of India and others reported in [2025 INSC 113]*.

38. Unless and until apparent perversity and violation of public policy of India is made out, the award of the Arbitrator need not be interfered. In this case, we find that the arbitrator had acted judiciously and the award does not suffer from any infirmity. It is the appellant herein, who has



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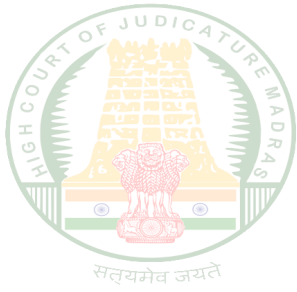
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instituted the appeal raising frivolous grounds with an oblique intention to deprive the lawful claim of the contractor.

39. Hence, *this Arbitration Appeal is dismissed with cost of Rs.1,00,000/- payable to the respondent.* Consequently, connected Miscellaneous Petition is closed.

(Dr.G.J.J.) & (M.S.K.J.)
16.10.2025

Index:yes
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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Dr.G.JAYACHANDRAN, J.
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