



OSA.No.238 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C. KUMARAPPAN**

**OSA.No.238 of 2024
and
CMP.Nos.28273 & 28272 of 2024**

R.Chandrasekaran Alias Valasai Chandran

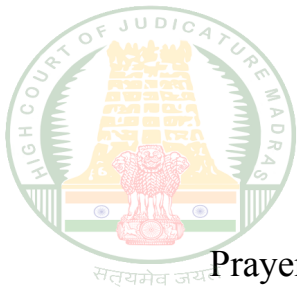
.. Appellant

VS

M/s.Bollineni Developers Ltd.,
Registered Office At 1st Floor,
Progressive Towers,
6-2-913/914,
Khariatabad, Hyderabad-500 004
With Branch Office at
87/39, Poes Garden, Chennai-600 086
Though its Director B.Krishnaiah

Mr.Justice K.Sampath (Deceased)
Sole Arbitrator
No.11, Second Street, Jagadambal Colony
Royapettah, Chennai-600 014.
(Not pursued)

.. Respondents



OSA.No.238 of 2024

Prayer : Appeal filed under Order XXXVI of the Original Side Rules read with Clause 15 of the Letters Patent Act, against the Order dated 19.12.2019 passed by this Court in OP.No.307 of 2013.

For Appellant : Mrs.S.Hemalatha

For Respondents : Mr.R.Thiagarajan
for Mrs.Vasudha Thiagarajan

JUDGMENT

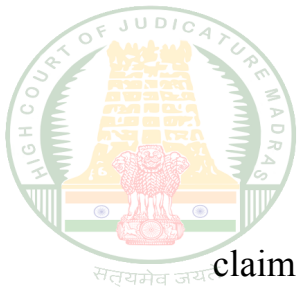
(Judgment of the Court was made by DR.ANITA SUMANTH,J.)

This intra-Court appeal is filed in terms of Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'Act') challenging order dated 19.12.2019 in O.P.No.307 of 2013.

2.We have heard the detailed submissions of Mrs.S.Hemalatha, learned counsel for the appellant and Mr.R.Thiagarajan, learned counsel appearing on behalf of Mrs.Vasudha Thiagarajan, learned counsel for R1.

3.The facts in issue, briefly put, are as follows. The parties had entered into a memorandum of agreement (MOU) dated 31.03.2007 for the purchase of lands in and around Sriperumbudur. A sum of Rs.100 crores had been advanced by the respondent.

4.For various reasons, the transactions did not fructify and hence a



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claim had been made by the respondent invoking the arbitration clause in the MOU. Pending arbitration, the parties entered into a memorandum of compromise (MOC) dated 19.12.2011 agreeing that the amount of Rs.100 crores shall be repaid in four installments of Rs.25 crores each, for which purpose, proceedings for arbitration were kept open till 31.03.2012.

5.That MOC concluded with the following clause:

'V In the event of the above terms not being complied with by payment as contemplated above, the claimant will be entitled to recover Rs.110 (Rupees hundred and ten crores only) from the respondent by proceeding against the attached and the other properties of the respondent, retaining the lands already conveyed.'

6.It has hence been the unambiguous agreement of the parties that in the event of the terms of the MOC not being satisfied by the appellant, then the respondent will be entitled to recover a sum of Rs.110 crores from the appellant by proceeding against the properties of the appellant presently under attachment. The MOC, duly signed by the claimant (respondent in OSA) and its counsel as well as respondent (appellant in OSA) and his counsel, including specifically the last clause, has been produced before us.



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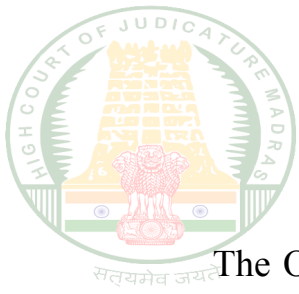
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7.Importantly, the appellant before us has not, at any stage of the proceedings disputed the execution of the MOU. The fact that the appellant felt fully bound by the terms of the MOC is also evidenced by the position that three applications for extension of time for complying with the terms thereof were filed before the Arbitral Tribunal on 29.03.2012, 24.07.2012 and 09.08.2012. Counters were filed by the respondent before the Arbitral Tribunal to each of the applications objecting to the grant of extension of time as sought for.

8.We have perused the affidavits in the petitions filed before the Tribunal seeking extension of time and we find the acceptance of the MOC and the terms therein, reiterated time and again. Accommodation had been sought citing only paucity of funds as well as the effort required to identify a person/entity to fund the payment.

9.Ultimately and since the appellant did not comply with the terms, an additional award was passed on 09.08.2012, effective on and from 10.09.2012. There was no compliance of the terms of the MOC even during that interim period.

10.It is in the aforesaid circumstances that the appellant filed O.P.No.307 of 2013 challenging the additional award dated 09.08.2012.



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The O.P. ultimately came to be dismissed on 19.12.2019, learned Judge finding no necessity to intervene in the award passed on the basis of the Joint MOC dated 19.12.2011.

11. There is also a categorical finding that it was never the case of the appellant that the consent for compromise had been obtained by fraud and in such circumstances, the challenge to the award was not liable to be sustained. It is as against the aforesaid order dated 19.12.2019 that the present OSA has been filed.

12. The respondent has urged that the impugned order be sustained as there is no justification for the appellant to drag the matter any further. The appellant has not made even a part payment thus far, resulting in untold hardship to the respondent.

13. Having heard both the learned counsel, and on a perusal of the grounds filed before us, we find that even at the stage of OSA, the attempt of the appellant is only to buy more time. No legal infirmity has been pointed out in any of the proceedings leading to, or paving the way for the present appeal. The submissions of learned counsel for the appellant turn primarily on the difficulties faced by the appellant in finding an appropriate investor to fund the investment.



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14. We concur with the findings of the learned Judge in order dated 19.12.2019 that no grounds have been made out for intervention in the award either at the stage of appeal under Section 34, or more so, in terms of Section 37 of the Act. Having not disputed the execution of the MOC at any point of time, the parties cannot renege on the same.

15. The citations relied upon by the learned counsel for the respondent are well received and support our conclusion as above. In *C & C Constructions Ltd. v. IRCON International Ltd.* (2025 INSC 138), the Supreme Court reiterates the proposition, that the scope of interference in an appeal under Section 37 of the Act is extremely limited, referring to the judgments in the cases of *Larsen Air Conditioning and Refrigeration Company v. Union of India and others* (2023 INSC 708) and *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* [(2023) 9 SCC 85].

16. In the recent judgment in *S.V.Samudram v. State of Karnataka and another* (2024 INSC 17), the Supreme Court has reiterated yet again the settled proposition that the scope of intervention under Section 34, and all the more under Section 37, is very narrow.

17. The above proposition is applicable on all fours in the present



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case for two reasons. Firstly, the award is based on the admitted terms of an MOC executed between the parties and their counsel, and secondly, no legal infirmity whatsoever has been pointed out in impugned order dated 19.12.2019.

18.While dealing with similar circumstances as in the present appeal, the Himachal Pradesh High Court in *Executive Engineer, I & PH Division, Bilaspur v. Ramesh Khaneja* (2024:HHC:16588), had dismissed an appeal under Section 37 where the arbitral award was based on a consent decree. In such circumstances, there could be no patent illegality or conflict with the public policy of India, both of which are conditions in terms of Section 34 of the Act.

19.In light of the detailed discussion as above, we are of the view that there is no merit in this appeal and hence the same is dismissed. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [C.K., J]
04.02.2025

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
vs



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and
C. KUMARAPPAN.,J

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