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O.P.No.119 of 2018

In the High Court of Judicature at Madras

Reserved on
25.9.2025Delivered on :
06.10.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Petition No.119 of 2018 &
A.No.1087 of 2018

The Executive Engineer,
CPWD, CCD-II,
Shastri Bhavan,
Haddows Road,
Chennai-6.

...Petitioner

Vs

1.Shri.K.Ramkumar (died)
contractor

2.R.Brinda
3.R.Ravichandar
4.R.Anand

all at No.29/22,
Sundaram Street,
Arakkonam-631001.

(R2 to R4 were brought on record
as legal heirs of the deceased sole
respondent as per order dated
05.6.2025 in A.No.1312 of
2025 by AQJ

...Respondents



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PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the orders of the sole Arbitrator dated 01.7.2017 and 16.8.2017 and the final award dated 28.9.2017 granting a sum of Rs.26,74,000/- and consequently modify the award for admitting and awarding the claims of Rs.93,36,825/- with interest at 18% p.a. made by the petitioner and to award costs of the present petition.

For Petitioner : Mr.K.S.Jeyaganeshan, SPC
For Respondents : Mr.R.Sivaraman

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the orders passed by the sole Arbitrator respectively dated 01.7.2017 and 16.8.2017 and the final award dated 28.9.2017 granting a sum of Rs.26,74,000/- to the first respondent and to modify the award for admitting and awarding the claims of the petitioner to the tune of Rs.93,36,825/- together with interest.

2. During the pendency of the above petition, the first respondent died on 16.1.2023 and hence, his legal heirs were brought on record as respondents 2 to 4 in the above petition.

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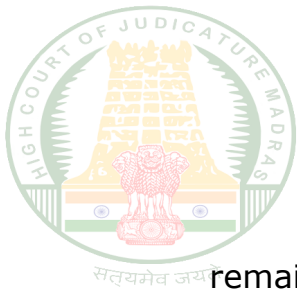
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3. Heard both.

4. The case of the petitioner is as follows :

(i) The Central Public Works Department invited tenders through notice dated 27.6.1998 for construction of an additional office accommodation for the Customs Department at Rajaji Salai, Chennai. The first respondent submitted his tender. The work was awarded to the first respondent through letter dated 07.10.1998. The estimated cost was Rs.3,03,21,633/- and the tendered amount was Rs.3,14,97,559/-. The work was stipulated to start on 17.10.1998 and it ought to have been completed on 16.10.2000. The work involved construction of two buildings.

(ii) Right from the beginning, the first respondent was not showing inclination to carry out the work in time and was delaying the work at each and every stage. Further, the revised time schedules were not adhered to. The first respondent was repeatedly seeking for extension of time and the dates were revised by the petitioner for completion. Though the process started from November 1998, the first respondent ultimately abandoned the work in December 2000. Thereafter, a fresh notice was issued inviting tenders to complete the



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remaining work and it was awarded to another contractor and the remaining work was completed only in the year 2003.

(iii) Pursuant to that, several letters were sent to the first respondent requesting him to send the final bill. But, he did not respond to any of them. It was under those circumstances, the petitioner invoked the arbitration clause namely Clause 25 of the agreement and made the following claims :

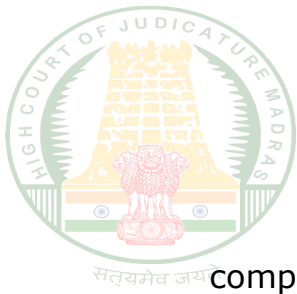
(1) A sum of Rs.75,86,825/- towards risk and cost amount to be borne by the contractor for the balance work executed at his risk and cost;

(2) A sum of Rs.15,00,000/- towards revenue loss by way of rent;

(3) Interest at the rate of 18% on the amount due to the petitioner claimed till the date of realization; and

(4) Rs.2,50,000/- towards cost of arbitration.

(iv) Before the sole Arbitrator, the first respondent raised a preliminary objection on the ground that the claims were barred by limitation. The first respondent also questioned the rescission of contract conveyed through letter dated 26.5.2001 and the levy of



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compensation in the light of rescission of the contract.

(v) The sole Arbitrator, by order dated 01.7.2017, took up the issue of limitation as the preliminary issue and rendered a finding that the claims made by the petitioner were barred by limitation and that they should not be taken up for adjudication and that the counter claims would be dealt with separately.

(vi) The sole Arbitrator, by another order dated 16.8.2017, rendered a finding that the rescission of the contract was bad under Section 55 of the Indian Contract Act and that the levy of compensation was unlawful and invalid.

(vii) On 28.9.2017, the final award was passed by the sole Arbitrator by awarding certain amounts towards (a) counter claim Nos.2 to 5 & 7 to 9 and (b) additional counter claim Nos.1, 6 & 7, in total, to the tune of Rs.26,74,000/- together with interest at the rate of 9% per annum from 01.11.2017.

(viii) In the above petition filed under Section 34 of the Act, the petitioner questioned the orders dated 01.7.2017 and 16.8.2017 and the final award dated 28.9.2017 and sought to modify the award for admitting and awarding the claims of the petitioner to the tune of Rs.93,36,825/- together with interest till the date of payment.



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5. Before this Court, the learned counsel appearing for the respondents took a preliminary objection to the effect that the petitioner failed to challenge the orders respectively dated 01.7.2017 and 16.8.2017 independently, that those orders had become final and that under the guise of challenging the final award dated 28.9.2017, those orders cannot be clubbed and challenged in the above petition.

6. Per contra, the learned Senior Panel Counsel appearing for the petitioner submitted that the orders respectively dated 01.7.2017 and 16.8.2017 are in the nature of an interim award and they got merged with the final award only after it was passed on 28.9.2017 and that therefore, the petitioner would be entitled to question both the two earlier orders as well as the final award dated 28.9.2017.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the orders respectively dated 01.7.2017 and 16.8.2017 as well as the final award dated 28.9.2017.



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8. In the considered view of this Court, the orders respectively dated 01.7.2017 and 16.8.2017 cannot be construed as interim awards. It is now a settled principle of law that an interim award is final to the extent it goes or only till the final award is delivered and that if the interim award is intended to have the effect only as long as the final award is not passed, it will have the force of the interim award and it will cease to have effect after the final award is passed. In other words, the interim award would get merged with the final award or the final award would eclipse the interim award.

9. Keeping the above principles in mind, this Court must see if the orders respectively dated 01.7.2017 and 16.8.2017 are interim awards.

10. The orders respectively dated 01.7.2017 and 16.8.2017 virtually take away the entire right of the petitioner to make any claim against the first respondent. This is in view of the fact that the sole Arbitrator rendered a finding in the order dated 01.7.2017 that the claims of the petitioner were barred by limitation. As a consequence, the plea of rescission of the contract and levy of compensation by the



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petitioner against the first respondent must automatically fail.

11. It is relevant to take note of the definition of the term '**arbitral award**' as defined under Section 2(1)(c) of the Act. It states that an arbitral award includes an interim award.

12. The next question that arises for consideration is as to whether the issue of limitation decided by the sole Arbitrator against the petitioner can be said to be an interim award and as to whether such order can be challenged under Section 34 of the Act.

13. This issue is no longer res integra as the same was dealt with by the Hon'ble Apex Court in the case of **Indian Farmers Fertilizer Cooperative Ltd. Vs. Bhadra Products [reported in 2018 (2) SCC 534]**, the relevant portions of which are extracted as hereunder :

"7. As can be seen from Section 2(c) and Section 31(6), except for stating that an arbitral award includes an interim award, the Act is silent and does not define what an interim award is. We are, therefore, left with Section 31(6) which



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delineates the scope of interim arbitral awards and states that the Arbitral Tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

8. The language of Section 31(6) is advisedly wide in nature. A reading of the said subsection makes it clear that the jurisdiction to make an interim arbitral award is left to the good sense of the Arbitral Tribunal, and that it extends to "any matter" with respect to which it may make a final arbitral award. The expression "matter" is wide in nature, and subsumes issues at which the parties are in dispute. It is clear, therefore, that any point of dispute between the parties which has to be answered by the Arbitral Tribunal can be the subject-matter of an interim arbitral award. However, it is important to add a note of caution. In an appropriate case, the issue of more than one award may be necessitated on the facts of that case. However, by dealing with the matter in a piecemeal fashion, what must be borne in mind is that the resolution of the dispute as a whole will be delayed and parties will be put to additional expense. The Arbitral Tribunal should, therefore, consider whether there is any real advantage in delivering interim awards or in proceeding with the matter as a whole and delivering one final award, bearing in mind the avoidance of delay and additional expense. Ultimately, a fair means for



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resolution of all disputes should be uppermost in the mind of the Arbitral Tribunal.

9. To complete the scheme of the Act, Section 32(1) is also material. This section goes on to state that the arbitral proceedings would be terminated only by the final arbitral award, as opposed to an interim award, thus making it clear that there can be one or more interim awards, prior to a final award, which conclusively determine some of the issues between the parties, culminating in a final arbitral award which ultimately decides all remaining issues between the parties.

10. The English Arbitration Act, 1996, throws some light on what is regarded as an interim award under English Law. Section 47 thereof states:

'47. Awards on different issues, &c.—(1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.

(2) The tribunal may, in particular, make an award relating—

*(a) to an issue affecting the whole claim, or
(b) to a part only of the claims or cross-claims submitted to it for decision.*

(3) If the tribunal does so, it shall specify in its award the issue, or the claim or part of a claim, which is the subject-matter of the award.'



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11. *By reading this section, it becomes clear that more than one award finally determining any particular issue before the Arbitral Tribunal can be made on different aspects of the matters to be determined. A preliminary issue affecting the whole claim would expressly be the subject-matter of an interim award under the English Act. The English Act advisedly does not use the expression "interim" or "partial", so as to make it clear that the award covered by Section 47 of the English Act would be a final determination of the particular issue that the Arbitral Tribunal has decided.*

12. *In Exmar BV v. National Iranian Tanker Co. [Exmar BV v. National Iranian Tanker Co., (1992) 1 Lloyd's Rep 169] an interim final award was made, which contained the decision that it would not issue any such award in the claimant's favour pending determination of the respondent's counter claims. Detailed reasons were given for this decision. The Judge, therefore, characterised the aforesaid award as an award finally deciding a particular issue between the parties, and concluded that as a result thereof, he had jurisdiction to review the Tribunal's decision.*

13. *In Satwant Singh Sodhi v. State of Punjab [Satwant Singh Sodhi v. State of Punjab, (1999) 3 SCC 487] , an interim award in respect of one particular item was made by the arbitrator in that case. The question before the Court was*



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whether such award could be made the rule of the Court separately or could be said to have been superseded by a final award made on all the claims later. This Court held: (SCC p. 491, para 6)

'6. The question whether interim award is final to the extent it goes or has effect till the final award is delivered will depend upon the form of the award. If the interim award is intended to have effect only so long as the final award is not delivered it will have the force of the interim award and it will cease to have effect after the final award is made. If, on the other hand, the interim award is intended to finally determine the rights of the parties it will have the force of a complete award and will have effect even after the final award is delivered. The terms of the award dated 26-11-1992 do not indicate that the same is of interim nature.'

On the facts of the case, the Court then went on to hold: (Satwant Singh case [Satwant Singh Sodhi v. State of Punjab, (1999) 3 SCC 487] , SCC p. 493, para 11)

'11. This Court in Rikhabdass v. Ballabhdas [Rikhabdass v. Ballabhdas, AIR 1962 SC 551 : 1962 Supp (1) SCR 475] held that once an award is made and signed by the arbitrator, the arbitrator becomes functus officio. In Juggilal Kamlatpat v. General Fibre Dealers Ltd. [Juggilal Kamlatpat v. General Fibre Dealers Ltd., AIR 1962



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SC 1123 : 1962 Supp (2) SCR 101] this Court held that an arbitrator having signed his award becomes functus officio but that did not mean that in no circumstances could there be further arbitration proceedings where an award was set aside or that the same arbitrator could never have anything to do with the award with respect to the same dispute. Thus, in the present case, it was not open to the arbitrator to redetermine the claim and make an award. Therefore, the view taken by the trial court that the earlier award made and written though signed was not pronounced but nevertheless had become complete and final, therefore, should be made the rule of the court appears to us to be correct with regard to Item 1 inasmuch as the claim in relation to Item 1 could not have been adjudicated by the arbitrator again and it has been rightly excluded from the second award made by the arbitrator on 28-1-1994. Thus the view taken by the trial court on this aspect also appears to us to be correct. Therefore, the trial court has rightly ordered the award dated 28-1-1994 to be the rule of the court except for Item 1 and in respect of which the award dated 26-11-1992 was ordered to be the rule of the court.'

It is, thus, clear that the first award that was made that finally determined one issue between the parties, with respect to Item 1 of the claim, was held to be an interim award inasmuch as it finally



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determined Claim 1 between the parties and, therefore, could not be re-adjudicated all over again.

14. In McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , under the heading "validity of the partial award", this Court held: (SCC pp. 211-12, paras 68-70)

'68. The 1996 Act does not use the expression "partial award". It uses interim award or final award. An award has been defined under Section 2(c) to include an interim award. Sub-section (6) of Section 31 contemplates an interim award. An interim award in terms of the said provision is not one in respect of which a final award can be made, but it may be a final award on the matters covered thereby, but made at an interim stage.

69. The learned arbitrator evolved the aforementioned procedure so as to enable the parties to address themselves as regards certain disputes at the first instance. As would appear from the partial award of the learned arbitrator, he deferred some claims. He further expressed his hope and trust that in relation to some claims, the parties would arrive at some sort of settlement having regard to the fact that ONGC directly or indirectly was involved therein. While in relation to



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some of the claims, a finality was attached to the award, certain claims were deferred so as to enable the learned arbitrator to advert thereto at a later stage. If the partial award answers the definition of the award, as envisaged under Section 2(c) of the 1996 Act, for all intent and purport, it would be a final award. In fact, the validity of the said award had also been questioned by BSCL by filing an objection in relation thereto.

70. We cannot also lose sight of the fact that BSCL did not raise any objection before the arbitrator in relation to the jurisdiction of the arbitrator. A ground to that effect has also not been taken in its application under Section 34 of the Act. We, however, even otherwise do not agree with the contention of Mr Mitra that a partial award is akin to a preliminary decree. On the other hand, we are of the opinion that it is final in all respects with regard to disputes referred to the arbitrator which are subject-matters of such award. We may add that some arbitrators instead and in place of using the expression "interim award" use the expression "partial award". By reason thereof the nature and character of an award is not changed. As, for example, we may notice that in arbitral proceedings conducted under the Rules of Arbitration of the International Chamber of Commerce, the expression "partial award" is generally used by the arbitrators in place of interim



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award. In any view of the matter, BSCL is not in any way prejudiced. We may state that both the partial award and the final award are subject-matter of challenge under Section 34 of the Act.'

The aforesaid judgment makes it clear that an interim award or partial award is a final award on matters covered therein made at an intermediate stage of the arbitral proceedings.

15. Tested in the light of the statutory provisions and the case law cited above, it is clear that as the learned arbitrator has disposed of one matter between the parties i.e. the issue of limitation finally, the award dated 23-7-2015 is an "interim award" within the meaning of Section 2(1)(c) of the Act and being subsumed within the expression "arbitral award" could, therefore, have been challenged under Section 34 of the Act."

14. It is pellucid from the said judgment of the Hon'ble Apex Court that where the issue of limitation has attained finality, that has to be challenged independently under Section 34 of the Act.

15. The subsequent order dated 16.8.2017 is a fall out of the earlier order dated 01.7.2017 and it ought to have been challenged independently by the petitioner.



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16. In the light of the above discussions, this Court holds that the above petition filed challenging the orders dated 01.7.2017 and 16.8.2017 is unsustainable and that those orders have become final since they have not been independently put to challenge by the petitioner.

17. In view of the above finding, the issue that can be gone into in the above petition is as to whether most of the counter claims and a few of the additional counter claims that were allowed by the sole Arbitrator through the final award dated 28.9.2017 suffer from any illegality as contemplated under Section 34 of the Act.

18. The first ground raised by the learned Senior Panel Counsel appearing for the petitioner to the effect that since the main claims were barred by limitation, the counter claims must also be held to be barred by limitation only deserves to be rejected. In the order dated 01.7.2017, a finding has been rendered to the effect that the counter claims and the additional counter claims were not barred by limitation and that order has become final. Hence, most of the counter claims



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and a few of the additional counter claims granted in favour of the first respondent cannot be rejected on the ground of limitation.

19. The learned Senior Panel Counsel appearing for the petitioner contended as follows :

Right from the beginning, the first respondent was not showing any inclination to carry out the work on time and was deviating from the time schedules. Even the revised time schedules were not adhered to. Therefore, there was wilful breach of contract on the part of the first respondent. Ultimately, the first respondent abandoned the work, due to which, the balance work had to be given to a new contractor.

20. Per contra, the learned counsel appearing for the respondents submitted that the sole Arbitrator considered each of the counter claims and the additional counter claims made by the first respondent and rightly awarded a sum of Rs.26,74,000/-, which is borne out by documents and that therefore, the final award dated 28.9.2017 does not warrant the interference of this Court.

21. On perusal of the materials placed before this Court, it is



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seen that the first respondent made 9 counter claims and 7 additional counter claims. In so far as counter claim Nos.1 and 6 are concerned, they were rejected. In so far as counter claims 2, 3, 5 & 7 to 9 are concerned, they were partly allowed. Counter claim No.4 was allowed in toto. In so far as the additional counter claims are concerned, additional counter claim Nos.1, 6 and 7 were partly allowed. Further, additional counter claim Nos.4 and 5 were not pressed and additional claim Nos.2 and 3 were rejected.

22. In so far as the limitation for the counter claims is concerned, the first respondent took a stand that the limitation period for the claims made by the petitioner would start only from the date of rescission i.e 26.5.2001 and not from the date of final bill preparation i.e. from 21.11.2007 to 22.12.2008 and the counter claims were lodged on 12.6.2010. This ground has been accepted by the sole Arbitrator and an order dated 01.7.2017 has also been passed on this issue, which has become final.

23. The next issue that arises for consideration is as to whether the counter claims/additional counter claims that were allowed/partly



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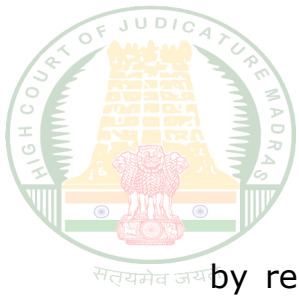
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allowed by the sole Arbitrator suffer from any perversity or patent illegality.

24. In so far as counter claim No.1 is concerned, it deals with compensation claimed towards delay in the site availability, site access, etc. The sole Arbitrator rendered a finding that that the first respondent was not entitled to any compensation under this head. Counter claim No.6, which deals with the claim towards compensation for mental harassment, has also been rejected.

25. In so far as counter claim No.2 is concerned, it pertains to escalation costs as provided under Clause 10CC of the contract. The sole Arbitrator rendered a finding that already, the levy of compensation claimed by the petitioner was concluded to be unlawful and invalid and that therefore, the first respondent would be entitled to escalation costs upto the final bill and granted a sum of Rs.1,15,800/- under this head.

26. In so far as counter claim No.3 is concerned, it deals with loss of profit due to illegal termination of contract. The sole Arbitrator,



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by relying upon the judgment of the Hon'ble Apex Court in **A.T.Brij Paul Singh Vs. State of Gujarat [reported in AIR1984 SC 1703]**, assessed the loss of profit at 10% and awarded a sum of Rs.2 lakhs under this head.

27. In so far as counter claim No.4 is concerned, it deals with refund of earnest money deposit and security deposit recovered to the tune of Rs.5 lakhs, which claim was later revised and a sum of Rs.7,24,229/- was claimed. However, the sole Arbitrator awarded a sum of Rs.5 lakhs under this head.

28. In so far as counter claim No.5 is concerned, it deals with payment of bill amounts withheld. The sole Arbitrator adjusted payments already made, calculated the withheld amounts and awarded a sum of Rs.1 lakh.

29. In so far as counter claim No.7 is concerned, it deals with levy and recovery of compensation of 10% for the delay. The sole Arbitrator granted a sum of Rs.3,97,400/- under this head after making a detailed calculation at para 14 of the impugned award.



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30. In so far as counter claim Nos.8 and 9 and additional counter claim No.7 towards payment of interest are concerned, the sole Arbitrator awarded a sum of Rs.10,91,712/- which was rounded off to Rs.10,91,700/- in toto.

31. In so far as additional counter claim No.1 is concerned, it deals with refund of penal recovery effected in the final bill. After making due calculation, the sole Arbitrator awarded a sum of Rs.69,100/-.

32. In so far as additional counter claim No.6 is concerned, it deals with cost of arbitration and a sum of Rs.2 lakhs has been awarded under this head.



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33. In so far as additional counter claim Nos.2 and 3 are concerned, they were rejected. In so far as additional counter claim Nos.4 and 5 are concerned, the first respondent dropped those claims.

34. The above counter claims and the additional counter claims awarded by the sole Arbitrator are supported by reasons and the compensation fixed is held to be reasonable. They do not fall foul of any of the 8 pigeon holes available under Section 34 of the Act. Hence, this Court does not find any ground to interfere with the final award passed by the sole Arbitrator dated 28.9.2017.

35. Accordingly, the above original petition is dismissed with cost of **Rs.1,00,000/- (Rupees one lakh only)** to be payable by the petitioner to respondents 2 to 4. Consequently, the connected application is also dismissed.

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Index : Yes
Neutral Citation : Yes

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