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Arb.O.P.(Com.Div.) Nos.48 of 2021
& 59 of 2022

In the High Court of Judicature at Madras

Reserved on 01.12.2025	Delivered on: 04.12.2025
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Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) Nos.48 of 2021 & 59 of 2022

M/s.KRK Education Trust
rep. by its Managing Trustee
Mr.K.R.Ilanghovan

...Petitioner in
Arb.O.P.No.48
of 2021 &
Respondent in
Arb.O.P.No.59
of 2022

Vs

Mr.D.Prem, Proprietor,
M/s.D Square,
Tiruchirapalli.

...Respondent in
Arb.O.P.No.48 of
2021 &
Petitioner in
Arb.O.P.No.59 of
2022

PETITIONS under

(i) Section 34(2)(a)(ii) of the Arbitration and Conciliation Act,



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1996 praying to set aside the award dated 06.2.2020 to the extent the rejected portion of the claim of the petitioner is concerned (Arb.O.P.(Com.Div.) No.48 of 2021); and

(ii) Section 34(2) of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 06.2.2020 passed by the learned Arbitrators in Arbitration No.Nil of 2015 pertaining to the disputes between the petitioner and the respondent (Arb.O.P. (Com.Div.) No.59 of 2022).

For Petitioner in
Arb.O.P.No.48 of 2021 &
Respondent in
Arb.O.P.No.59 of 2022 : Ms.Tanya Kapoor

For Respondent in
Arb.O.P.No.48 of 2021 &
Petitioner in
Arb.O.P.No.59 of 2022 : Mr.K.S.Viswanathan, SC
for
Mrs.T.Hemalatha

COMMON ORDER

The petitioner in Arbitration O.P.(Com.Div.) No.48 of 2021 was the claimant and the petitioner in Arbitration O.P.(Com.Div) No.59 of



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2022 was the respondent before the Arbitral Tribunal. They will be identified in this common order in line with their respective ranking before the Arbitral Tribunal.

2. Heard both.

3. The claimant filed Arbitration O.P.(Com.Div.) No.48 of 2021 against the award passed by the Arbitral Tribunal dated 06.2.2020, the extent, to which, certain claims made by the claimant came to be rejected. The respondent filed Arbitration O.P.(Com.Div.) No.59 of 2022 with regard to that portion of the award, which directed the respondent to refund a sum of Rs.49,09,745/- to the claimant and as against the rejection of their counter claim.

4. The facts leading to filing of these cases are as follows:

(i) During the relevant point of time, the claimant was in the process of establishing an engineering and management college. For that purpose, they identified 26 acres of land in Pulivalam Village, Tiruchirapalli to establish the said college. One M/s.Ainthiram



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Developers Private Limited approached the claimant giving their expertise for undertaking the project. They also introduced two potential contractors to do the work. They are (a) one M/s.Sha Constructions; and (b) the respondent.

(ii) Upon the representations made, a work order was issued by the claimant to the respondent on 12.4.2010 for civil works at a cost computed at the rate of Rs.800/- per sq.ft. According to the claimant, this was agreed based on the usage calculation of 5 Kgs of steel per sq.ft., provided by the Architect. A contract was also entered into between the parties on 12.4.2010. As per the contract, it was specifically agreed that the amounts would be payable to the respondent only on certification of the bills by the Architect.

(iii) Apart from other terms of the contract, Clause 24.1(c) provided for dispute resolution through arbitration. In so far as the respondent was concerned, the contract was awarded specifically for execution of works in Block C. The project was executed between April 2010 and December 2011. Certain payments were made to the respondent and ultimately, when the final bill was raised, it was



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alleged that the Architect approved the same mechanically. When the claimant pointed out the mistakes in the certification, the Architect rectified the same and revised the certified bill.

(iv) Subsequently, various disputes arose between the parties, which led to the appointment of the Arbitral Tribunal.

(v) The claimant filed a statement of claim before the Arbitral Tribunal by raising the following disputes:

- "(a) difference in steel consumption – not as per specification by Structural Engineer;*
- (b) defects in construction and rectification;*
- (c) inclusion of the parapet wall area in total sq.ft., constructed by the respondent;*
- (d) the respondent used aluminium doors instead of UPVC – difference in cost to be deducted from bill;*
- (e) reduction in price for corridor portion;*
- (f) difference in level and cost towards filling;*
- (g) cost towards weathering course; and*
- (h) difference in 2nd floor base price reduced by Rs.44/- since 2F rate was fixed at Rs.750/-."*

(vi) In the light of the above, the claimant prayed before the Arbitral Tribunal to pass an award for a sum of Rs.81.85 lakhs along



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with interest at the rate of 18% from the date, on which, it became due and payable till the date of actual payment.

(vii) Before the Arbitral Tribunal, the respondent filed a statement of defence wherein they took a stand that the Architect, in violation of the contractual provisions, revised the certified final bill unilaterally without notice to the respondent and apart from that, the revised calculation was also factually incorrect and erroneous. The respondent also took a very specific stand that the Architect had no power to rectify the certification. The respondent sought for a counter claim to the tune of Rs.28,42,270/- for the works done along with interest at the rate of 18% per annum.

(viii) The Arbitral Tribunal, on considering the pleadings, framed the following issues:

"(1) What were the terms of the contract between the parties?"

(2) By whom was the breach committed?"

(3) Whether the deductions made by the Architect in the certified final bill dated 01.2.2013 is correct?"

(4) Whether the respondent is liable to pay a sum of Rs.81.85 lakhs to the claimant?"

(5) Whether the respondent is entitled to



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counter claim as prayed for?

(6) Whether the parties are entitled to interest as claimed by them?

(7) Whether the parties are entitled to costs of the proceedings? And

(8) To what relief the parties are entitled?"

(ix) During the arbitration proceedings, C.W.1 was examined on the side of the claimant besides marking Ex.C.1 to Ex.C.62. On the side of the respondent, R.W.1 to R.W.3 were examined and Ex.R.1 to Ex.R.6 were marked.

(x) The Arbitral Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, passed the impugned award in the following terms:

"(a) The respondent shall pay the claimant a sum of Rs.49,09,745/-;

(b) The interest payable by the respondent on the sum set out in (a) above shall be at the rate of 12% p.a. from 01.2.2013 till date of realisation; and

(c) The respondent shall reimburse the claimant the sums paid by the claimant as fees to the Arbitrators and the venue charges for the sittings of the Arbitral Tribunal."

(xi) Aggrieved by the award passed by the Arbitral Tribunal, both



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sides have approached this Court by filing individual petitions under Section 34 of the Arbitration and Conciliation Act, 1996 to ventilate their respective grievances.

5. The learned counsel appearing for the claimant made the following submissions:

(a) The Arbitral Tribunal ignored the vital evidence and overlooked the terms of the agreement while denying the claim as regards the reduction in the rate based on the steel quantity consumption for the second floor;

(b) The Arbitral Tribunal went wrong in rejecting the claim made towards defect in the construction, as a result of which, the claimant incurred expenses to the tune of Rs.2.18 lakhs;

(c) The Arbitral Tribunal went wrong in dismissing the claim petition for the construction of parapet wall to the tune of Rs.2,82,100/-;

(d) The Arbitral Tribunal went wrong in rejecting the claim for price reduction for common areas such as corridor, staircase, head room portion, etc; and



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(e) The award is capable of being modified by severing the invalid portion of the award from the valid portion. For this purpose, the learned counsel relied upon the judgment of the Hon'ble Apex Court in ***Gayatri Balasamy Vs. ISG Novasoft Technologies [reported in 2025 (7) SCC 1]***.

6. Per contra, the learned Senior Counsel appearing on behalf of the respondent made the following submissions:

(a) Once the Architect certified the final bill, it could not be reviewed and there was no justification for deduction of the amount to the tune of Rs.8,24,942.90 Ps at the reduced rate of Rs.44/- per sq.ft on account of lesser steel consumption. The respondent never agreed for such reduction of rate.

(b) The repayment of Rs.30 lakhs and Rs.35 lakhs made by the respondent had nothing to do with the payments made towards the contract and those were payments, which came into the account and went away from their account even on the very same day. It was more in the nature of an arrangement between the parties to accommodate



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the request made by the claimant in this regard.

(c) The Arbitral Tribunal went wrong in calculating the total sum received by the respondent as Rs.2,04,55,000/- without taking into account the fact that the sum of Rs.65 lakhs was repaid to the claimant as was explained in the earlier submission.

(d) The Arbitral Tribunal went wrong in not appreciating the fact that the respondent actually received a sum of Rs.1,39,55,188/-. The Arbitral Tribunal also rendered a finding that the amount that was payable to the respondent was Rs.1,55,45,255/- and that the claimant was liable to pay a further sum of Rs.8,24,943/-, totalling to a sum of Rs.1,63,70,198 and the balance amount payable by the claimant would be Rs.1,63,70,198/- *minus* Rs.1,39,55,188/- = Rs.24,15,198/- together with interest.

(e) Though a counter claim was made for a sum of Rs.28,42,270/-, the respondent now claims a sum of Rs.24,15,198/- with interest.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on



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record and more particularly the impugned award passed by the Arbitral Tribunal.

8. The submissions made on either side revolve around the revised certification of the final bill by the Architect, which virtually reduced the total amount payable to the respondent.

9. The learned counsel appearing for the claimant submitted that such revision of the final bill was made in terms of the agreement between the parties whereas the respondent had taken a stand that the Architect did not have any right to revise the final bill already certified and that the respondent did not agree for any alteration of the rates as was claimed by the claimant.

10. The Arbitral Tribunal dealt with this issue while rendering a finding for issue Nos.1 to 3 and 5.

11. Ex.C.2 agreement dated 12.4.2010 provides for the cost of construction of the ground and the first floors of the building at



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Rs.800/- per sq.ft. Subsequently, the rate of construction of the second floor was agreed to be reduced to Rs.750/- per sq.ft. The Arbitral Tribunal also took into consideration the fact that the construction of the ground, the first and the second floors of Blocks 3A and 3B have been completed and handed over to the claimant during September 2011.

12. After the final bill was raised by the respondent as per the terms of the agreement, the Architect verified the same and certified it by fixing the total amount payable at Rs.17,80,823/-. The said recommendation along with the calculation dated 17.4.2012 was marked as Ex.R.3.

13. According to the claimant, there was a subsequent meeting held between the parties. The meetings held on 24.12.2010 and 25.12.2010 were attended by the parties concerned and it was decided to deduct the steel price. The steel price was reduced from 5 Kg per sq.ft., to 3.5 Kg per sq.ft. Pursuant to that, for the ground and the first floors, what was agreed at the rate of Rs.800/- per sq.ft., stood reduced to Rs.756/- per sq.ft., and for the second floor, what was



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originally agreed at Rs.750/- per sq.ft., got reduced to Rs.706/- per sq.ft. Thus, to that extent, the claimant raised the issue of novation of the earlier agreement.

14. The respondent denied agreeing for any such reduction in the rates on the ground that the respondent did not even sign any minutes of the meeting. In view of the same, the respondent questioned the revision of the final bill by the Architect based on the said minutes of the meeting. The revised bill dated 01.2.2013 was marked as Ex.C.6.

15. The Arbitral Tribunal, while dealing with the above issue, took into consideration the fact that the respondent themselves, in the letter dated 01.4.2013 marked as Ex.C.13, addressed to the Architect stating that the discussions were held on 24.12.2010 and 25.12.2010 with regard to steel consumption only in respect of the ground and the first floors and not the second floor. But, the respondent had not questioned the reduction of rate at Rs.800/- per sq.ft., by Rs.44/- on account of lower steel consumption for the ground and the first floors.



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16. In the light of this conduct on the part of the respondent to have impliedly acquiesced the agreement between the parties, the Arbitral Tribunal rendered a finding that there was a subsequent agreement between the parties in so far as the reduction in the rate for the ground and the first floors and accordingly, confirmed the rectification in the certification under Ex.C.6 with respect to the ground and the first floors. This finding of the Arbitral Tribunal is a possible view taken based on appreciation of evidence. This Court cannot sit on appeal and give a different interpretation since it is beyond the power and scope of Section 34 of the said Act.

17. The learned counsel appearing for the claimant submitted that the entire basis, on which, such reduction of rate was made, was on account of reduction of steel consumption and at the relevant point of time, only the ground and the first floors were completed. Therefore, there was no specific mention about the second floor. However, the same reasoning must be applied to the second floor also. Accordingly, the rate of Rs.750/- per sq.ft., must be reduced to



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Rs.706/- per sq.ft.

18. While dealing with the above issue, the Arbitral Tribunal came to the conclusion that there was no specific agreement between the parties for reduction of rate in so far as the second floor was concerned. The Arbitral Tribunal also found that there was no material in terms of oral and documentary evidence with respect to the actual steel consumption for the construction of the second floor. Hence, the Arbitral Tribunal did not find any ground to reduce the rate for the second floor since the specific agreement between the parties during the meetings held on 24.12.2010 and 25.12.2010 pertained only to the ground and the first floors. This finding rendered by the Arbitral Tribunal does not suffer from any perversity or patent illegality warranting its interference.

19. The next issue pertains to the claim made towards defects in the construction and rectification.

20. Clause 47 of the agreement provides for recovery of loss due



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to defective materials and cost of repairs.

21. The claimant relied upon Ex.C.5 and Ex.C.47, which substantiated the deficiencies in the work. Accordingly, the claimant justified the recoveries that were made in the final certification by the Architect under Ex.C.6.

22. This claim was denied by the respondent mainly on the ground that there was no evidence available for the claimant to recover the cost of rectification to the extent of Rs.2,10,000/-, that the screed concrete was an extra work made by the respondent and that no deduction could be made for this work.

23. The Arbitral Tribunal took into consideration the minutes of the meeting marked as Ex.C.46. The Arbitral Tribunal also carefully went through Ex.R.3 wherein it was seen that a sum of Rs.2,53,675/- was withheld towards rectification of deficiencies. The Arbitral Tribunal did not find any material to withhold a further sum of Rs.2,10,000/-. Thus, the Arbitral Tribunal found that there was no reason for



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withholding the further sum of Rs.2,10,000/- and accordingly, rejected the claim made under this head. This finding was rendered by the Arbitral Tribunal on appreciation of evidence and this Court does not find any perversity or manifest illegality in this finding rendered by the Arbitral Tribunal.

24. The other issue pertains to the claim made for the construction of the parapet wall area.

25. According to the claimant, as per the general practice prevailing, the parapet wall work cannot be included in the billable constructed area.

26. This claim was resisted by the respondent on the ground that the parapet wall work was not shown as a non billable item in Ex.C.2 agreement and that therefore, the respondent would be entitled to the cost incurred for putting up the parapet wall.

27. The parapet wall work was done in the second floor. This was included in Ex.R.3 as a separate item of work and a sum of



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Rs.2,38,160/- was computed. This item of work was completely omitted in Ex.C.6. The Arbitral Tribunal rendered a finding that the parapet wall work would constitute a billable area since Ex.C.2 did not show this work as a non billable item and that there was no justification to deny the payment of a sum of Rs.2,38,160/-, which was computed under Ex.R.3. Again, this finding is based on appreciation of evidence and does not warrant the interference of this Court.

28. The further issue that has been raised on the side of the claimant pertained to reduction in price for corridor, staircase and head room portion.

29. According to the claimant, the cost of construction of corridor and staircase was 30% lesser than the usual construction cost and therefore, the claimant would be entitled to Rs.21,98,160/- from the final bill.

30. The Arbitral Tribunal found that for construction of the



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corridor and the staircase, initially, the Architect calculated at the rate of Rs.750/- per sq.ft., and for the head room portion, the Architect calculated at the rate of Rs.582/- per sq.ft. This reduction of rate for the head room portion was not objected by the respondent. The Arbitral Tribunal found that the agreement did not specifically provide for a lower rate for the corridor and the staircase, that the Architect had rightly certified the same under Ex.R.3 along with other areas and that therefore, there was absolutely no reason to reduce that rate under Ex.C.6 without any basis. Yet again, this finding is based on appreciation of evidence by the Arbitral Tribunal and the same does not warrant the interference of this Court.

31. The last issue to be considered is regarding the challenge made by the respondent on the finding rendered by the Arbitral Tribunal pertaining to refund of the excess money paid to the respondent.

32. The learned Senior Counsel appearing on behalf of the respondent brought to the notice of this Court the statement of



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account, which was marked as Ex.R.4 and submitted that a sum of Rs.15 lakhs came into the account of the respondent on 20.12.2010 and on the same day, this amount was withdrawn, that similarly, a sum of Rs.20 lakhs came into the account of the respondent on 27.1.2011 and this amount was also withdrawn on the same day and that the entire amount of Rs.35 lakhs was paid to the brother-in-law of the claimant on the oral instructions given by the claimant.

33. The learned Senior Counsel appearing on behalf of the respondent also brought to the notice of this Court a sum of Rs.33 lakhs, which came into the account of the respondent on 07.2.2011 and on the same day, it was paid by means of RTGS to the tune of Rs.30,00,056/- in favour of one M/s.OAS Digital Infra pursuant to the request made by the claimant. Thus, it was submitted that the sum of Rs.65 lakhs had nothing to do with the contract and that though those sums were credited to the account of the respondent, they were immediately paid back pursuant to the instructions given by the claimant.



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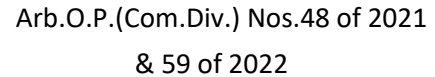


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34. In so far as the above ground raised by the learned Senior Counsel appearing on behalf of the respondent was concerned, the Arbitral Tribunal found that R.W.1 was examined on the side of the respondent to prove this transaction. The Arbitral Tribunal came to the conclusion that this payment of Rs.35 lakhs had no nexus to the contract for the construction of the building. Hence, the Arbitral Tribunal did not render any independent finding/opinion regarding the same. Therefore, it was concluded that the sum of Rs.35 lakhs received by the respondent could not be deducted from the total payment received.

35. The further submission made by the learned Senior Counsel appearing on behalf of the respondent touching upon the amount of Rs.33 lakhs credited to the account of the respondent was not even raised before the Arbitral Tribunal. It has been raised for the first time only before this Court. Hence, this Court does not find any reason to go into that issue. The discussion will confine itself only to a sum of Rs.35 lakhs that came into the account of the respondent in two tranches.



37. However, since the Arbitral Tribunal found that the total amount that was received by the respondent was to the tune of Rs.2,04,55,000/-, which also included the sum of Rs.35 lakhs, a finding was rendered to the effect that excess payments have been made to the respondent. Hence, the respondent was liable to refund the claimant a sum of Rs.49,09,745/- along with interest.



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38. In the case in hand, the Arbitral Tribunal was specifically dealing with the construction work undertaken by the respondent. It was covered under Ex.C.2 agreement and was subjected to minor modifications in the minutes of the meetings held on 24.12.2010 and 25.12.2010. Therefore, while dealing with the dispute, the Arbitral Tribunal could have gone into only those works done by the respondent and the amounts due and payable by the claimant to the respondent under the agreement.

39. The Arbitral Tribunal rendered a finding that the sum of Rs.35 lakhs remitted in two tranches had no nexus to the contract for the construction of the building and that it was an independent transaction unconnected with the contract between the parties.

40. After rendering such a factual finding and after having noticed the fact that this amount had come in and gone out on the same day, the purpose of which was spoken to by R.W.1, this amount ought not to have been included in the total payments received by the respondent for carrying out the work under the contract. In the



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considered view of this Court, this finding rendered by the Arbitral Tribunal is in total disregard to the evidence available on record and more so, due to the specific factual finding given by the Arbitral Tribunal itself to the effect that the sum of Rs.35 lakhs remitted in two tranches had no nexus to the contract between the parties As a result, this finding suffers from patent illegality. Hence, this amount of Rs.35 lakhs ought to have been deducted from the total payments received by the respondent.

41. If the amount of Rs.35 lakhs is deducted from the sum of Rs.2,04,55,000/-, the total comes to Rs.1,69,55,000/-. According to the Arbitral Tribunal, the total amount due and payable by the claimant was arrived at Rs.1,63,70,198/-. In that case, the balance amount payable to the respondent will be Rs.1,69,55,000 minus (-) Rs.1,63,70,198/- = Rs.5,84,802/-.

42. The Arbitral Tribunal rendered a finding that the respondent received excess amount of Rs.49,09,745/- from the claimant and that therefore, the respondent had to pay to the claimant the said sum with



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interest at the rate of 12% per annum from 01.2.2013 till the date of realisation. Now, this Court has come to the conclusion that it is the claimant, which has to pay a sum of Rs.5,84,802/- to the respondent.

43. Under such circumstances, the issue that arises for consideration is as to whether the award passed by the Arbitral Tribunal can be modified.

44. Useful reference can be made to the decision of the Hon'ble Apex Court in **Gayatri Balasamy** wherein the majority held that the Court has a limited power under Sections 34 and 37 to modify the arbitral award and that it can be exercised where the award is severable by severing the invalid portion from the valid portion of the award.

45. In the case in hand, the only invalid portion in the award passed by the Arbitral Tribunal pertains to including the sum of Rs.35 lakhs in the total amount received by the respondent from the claimant. This Court has already held that the Arbitral Tribunal



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rendered a finding that this amount of Rs.35 lakhs had no nexus to the contract between the parties. If that is so, instead of including the sum of Rs.35 lakhs in the total amount received, it has to be merely deducted from the total amount received by the respondent from the claimant. This invalid portion can certainly be severed from the other valid portions of the award and the award can be modified accordingly.

46. In the light of the above discussions, Arb.O.P.(Com.Div.) No. 48 of 2021 stands dismissed. Arb.O.P.(Com.Div.) No.59 of 2022 is partly allowed and the award passed by the Arbitral Tribunal dated 06.2.2020 is modified and the claimant is directed to pay to the respondent a sum of **Rs.5,84,802/- (Rupees five lakhs eighty four thousand eight hundred and two only)** along with interest at the rate of 12% per annum from 01.2.2013 – the date of rectification of the certification of the final bill till the date of realization. No costs.

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Index : Yes
Neutral Citation : Yes



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