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Arb.O.P.(Com.Div.)478 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25-03-2025**

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div.) No.478 of 2024

1. Divisional Railway Manager,
Chennai Division, Southern Railway,
Chennai.

2. Dy.CE/GS/MAS,
Then The Sr.Divisional Engineer,
Bridges, Chennai Division,
Southern Railways,
Chennai.

...Petitioners

Vs

M/s. Sivashankar & Co.,
rep. by its Proprietor,
D.Sivashankar,
303, EBONY Apartment,
110/2, River View Link Road,
IAS/IPS Colony, Manapakkam,
Chennai - 600 125.

..Respondent

For Petitioners : Mr.R.Rajesh Vivekananthan
Deputy Solicitor General of India

For Respondent : Mr.J.Srinivasa Mohan
for M/s.TVS Associates



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ORDER

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This petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the impugned arbitral award dated 27.02.2023.

2. The petitioners have challenged the impugned award only insofar as Claim Nos.8 and 9 filed before the Arbitral Tribunal are concerned. They are not aggrieved by the findings rendered by the Arbitral Tribunal in respect of the other claims. The respondent is the claimant and the petitioners are the respondents in the Arbitration. The respondent was a contractor for the petitioners in respect of fabrication and erection of steel work for provision of escalators to the existing Foot Over Bridge in Platforms 8, 9, 10 & 11 of Tambaram End and a contract was also entered into between the petitioners and the respondent for the same. There arose a dispute between the parties and the respondent had initiated arbitration in accordance with the arbitration clause and before the Arbitral Tribunal, they had filed a claim statement comprising of 13 claims.

3. According to the petitioners, their contract was illegally terminated by the respondent, as according to them, they never committed any breach of the contract. However, as seen from the statement of defence filed by the respondent before the Arbitral Tribunal, they disputed the contentions of the petitioners. In the impugned arbitral award, the Arbitral Tribunal has given a



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finding that the termination order dated 30.09.2020, terminating the contract of the respondent is illegal. The Arbitral Tribunal has allowed Claim Nos. 1 to 4, 8 & 9. However, Claim Nos.10 to 13 were rejected. Under Claim No.1, a declaration has been granted by the Arbitral Tribunal that the termination of the contract is unlawful. Under Claim No.2, performance guarantee was directed to be returned to the respondent by the petitioners. Under Claim Nos. 3 and 4, earnest money deposits and security deposits were directed to be refunded by the petitioners to the respondent. Subsequent to the passing of the impugned arbitral award, the directions issued by the Arbitral Tribunal insofar as Claim No.3 and Claim No.4 were complied with by the petitioners. The petitioners are now aggrieved only insofar as Claim Nos.8 and 9 are concerned. According to the petitioners, erroneously and by total non-application of mind, Claim No.8 has been awarded in favour of the respondent by the Arbitral Tribunal. As according to them, the contract, which is the subject matter of dispute is not relevant insofar as claim No.8 is concerned. The petitioners have also contended before this Court that the damages awarded by the Arbitral Tribunal in respect of Claim No.9 is also arbitrary and patently illegal.

3. Learned Deputy Solicitor General appearing for the petitioners drew the attention of this Court to the impugned Arbitral award as well as the



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evidence placed on record before the Arbitral Tribunal and would submit that the impugned arbitral award awarding the amount in favour of the respondent insofar as Claim No.8 is concerned is patently illegal, since according to him, the contract, which is the subject matter of dispute does not entitle the respondent to make claim No.8 before the Arbitral Tribunal. He would also submit that arbitrarily, the Arbitral Tribunal has awarded damages amounting to Rs.2,00,000/- to the respondent without any evidence.

4. On the other hand, learned counsel appearing for the respondent would submit that only based on the contract, which is the subject matter of dispute between the parties, Claim No.8 was lodged by the respondent before the Arbitral Tribunal. He also drew the attention of this Court to the contract which is marked as an exhibit and which is the subject matter of dispute to show that only based on the terms and conditions of the contract, Claim No.8 was awarded in favour of the respondent by the Arbitral Tribunal. According to him, the contract provides for revision of drawings and only with the approval of the petitioners, drawings were revised and only based on the revised drawings, the respondents are entitled for claim No.8 as awarded by the Arbitral Tribunal. Since the Arbitral Tribunal had categorically held that the contract has been illegally terminated by the petitioners based on the evidence available on

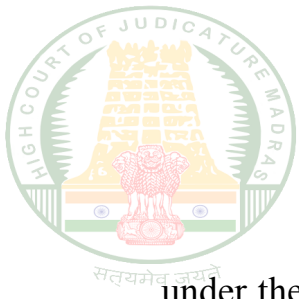


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record, consequential relief of payment of damages to the respondent amounting to Rs.2,00,000/- fixed by the Arbitral Tribunal is a correct assessment. He would also submit that when the Arbitral Tribunal has passed the impugned arbitral award only based on the evidence available on record, the question of interference, under Section 34 of the Arbitration and Conciliation Act, 1996, by this Court, does not arise. He would also submit that this Court cannot interfere with the findings of the Arbitrator under Section 34 of the Arbitration and Conciliation Act, when the view taken by the Arbitral Tribunal is a possible view.

5. In this petition, the petitioners are aggrieved only by the findings rendered by the Arbitral Tribunal insofar as Claim Nos.8 and 9 alone are concerned. Insofar as the other claims which were adjudicated by the Arbitral Tribunal are concerned, the petitioners have accepted the said findings rendered by the Arbitral Tribunal. In fact, subsequent to the passing of the impugned arbitral award, the performance bank guarantee which was the subject matter of claim No.2, has been returned to the respondent as per the directions issued in the impugned arbitral award. Similarly, the earnest money deposits and the security deposit amount have been refunded to the respondent on 20.10.2023 by the petitioners in compliance with the directions issued by the Arbitral Tribunal



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under the impugned award under Claim Nos.3 and 4. The question of refund of earnest money deposits and security deposit amount will arise only if the respondent had not committed any breach of contract. Having refunded the earnest money deposits and the security deposit amount, it is clear that the respondent had not committed any breach of contract.

6. The Arbitral Tribunal has passed an award only based on the evidence available on record and has also come to the right conclusion that the respondent has not committed any breach of contract and therefore, the Arbitral Tribunal has rightly held that the termination of the contract by the petitioners is illegal. The revised drawings submitted by the respondent to the petitioners have also been approved by the petitioners as seen from the GAD. The GAD is dated 21.11.2018 which was placed on record by the learned counsel appearing for the respondent which is also marked as an exhibit before the Arbitral Tribunal. Since the revised drawings were approved by the petitioners and the contract also enables the petitioners to revise the drawings which were earlier finalised and since the respondent has also got approval for the same, the Arbitral Tribunal has rightly awarded a sum of Rs.10,40,545/- towards Claim No.8 in favour of the respondent which was the actual work done by the



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respondent, based on the revised drawings approved by the petitioners. When a categorical finding has been rendered by the Arbitral Tribunal based on the evidence available on record that the termination of the contract by the petitioners is illegal, consequently, the payment of damages to the respondent will certainly arise.

7. The Arbitral Tribunal has awarded damages in favour of the respondent for a sum of Rs.2,00,000/-. The total contract value is Rs.91,31,274/- and the value of the completed work is Rs.62,82,314/- and considering the same and in view of the fact that the respondent has not committed any breach of contract, the award of Rs.2,84,896/- as damages by the Arbitral Tribunal is reasonable and cannot be interfered with, that too, when before the Arbitral Tribunal, the respondent had made a claim of damages amounting to Rs.6,77,288/-. Since the impugned arbitral award has been passed only based on the evidence available on records and it is an intelligible and a speaking award, the question of interference under Section 34 of the Arbitration and Conciliation Act, 1996, by this Court, does not arise.

8. For the foregoing reasons, there is no merits in this petition. Accordingly, this Original Petition is dismissed.

9. This Court, while granting interim stay of the enforcement of the



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impugned arbitral award on 12.12.2024, passed a conditional order, directing the petitioner to deposit 50% of the award amount insofar as Claim Nos.8 and 9 are concerned. As directed by this Court, the said amount was also deposited by the petitioners and is lying to the credit of this Original Petition.

10. Learned counsel for the respondent seeks permission of this Court to withdraw the said amount, since the main O.P. has been dismissed by this Court.

11. Since the O.P. is dismissed, the Registry is directed to payout the sum of money lying to the credit of the O.P. to the respondent which was earlier deposited by the petitioner pursuant to the directions given by this Court in its order dated 12.12.2024 in Application No.5812 of 2024.

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ABDUL QUDDHOSE,J.

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