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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1330 of 2025

M/s.Unique Builders,
Rep. by Mr.N.Sreenivasan (Partner),
No.36, D.N.Plaza, 2TM Floor, Thiruvalluvar Salai,
Thiruvalluvar Nagar, Mugappair East, Chennai-600037 ... Petitioner

Vs

Union Of India.
Principal Chief Engineer,
Headquarter Office, Southern Railway,
Park Town, Chennai - 600 003. ... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to allow this revision petition and direct the Executing Court to process and number the execution petition EP (Filing) No. 4842 of 2024 on the file of City Civil Court Chennai, in the Arbitration Award dated 02.09.2023 under Order 21 Rule 43 and 64 of CPC, with a reasonable time frame and dispose of the said Execution petition within a reasonable time frame as stipulated by this Court.

For Petitioner : Mr.P.J.Rishikesh

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O R D E R

This Civil Revision Petition has been filed seeking to direct the Executing Court to process and number the execution petition EP (Filing) No. 4842 of 2024 on the file of City Civil Court Chennai, in the Arbitration Award dated 02.09.2023 under Order 21 Rule 43 and 64 of CPC, and dispose the same within a stipulated time.

2. The case of the petitioner is that the dispute arising out of the contract bearing Agt.No.65/Bridges/MAS dated 11.03.2019 entered into with the respondent for the project titled "MAS AJJ-JTJ – Replacement of steel girders with PSC/RCC Slabs (Bridge No.298), was referred to the sole Arbitrator to adjudicate the dispute between the parties. The Arbitrator passed an award on 02.09.2023 directing the respondent to pay a sum of Rs.19,89,405/- along with interest at the rate of 10% from 01.11.2023 and it was published on 12.10.2023. Since the respondent failed to comply with the award, the petitioner has filed an execution petition under Order XXI Rule 43 & 64 of CPC on 17.04.2024 in EP (Filing) No. 4842 of 2024 seeking for a direction to pay an amount of Rs.20,43,548.15/- including interest as on 14.02.2024 (As on date, it sums to Rs.21,98,651 including interest), whereas, the Executing Court, without

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numbering the petition, returned the same on e-mode with an endorsement "How EP based on Award by Sole Arbitrator maintainable.. Hence returned. For Clarification." Challenging the same, the present Civil Revision Petition has been filed.

3. Learned counsel appearing for the petitioner submitted that it is not a case of unilateral appointment of the Arbitrator, however, after the dispute, the Arbitrator was appointed with the consent of both the parties and the petitioner has no objection in the appointment of the sole Arbitrator. He further submitted that the appointment of the Arbitrator was done in pursuance of Section 10(2) of the Arbitration Act, which reads as under :-

> "10. Number of arbitrators - (1) The parties are free to determine the number of artbitrators, provided that such manner shall not be an even number.
>
> (2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator."

He also submitted that the respondent has not filed an appeal challenging the Award and thereby, the Award has become final and in such circumstances, the Executing Court cannot return the petition. Hence, he sought for a direction to the Executing Court.

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4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. A perusal of the record shows that it is not a case of unilateral appointment of the Arbitrator and that only after a dispute arose, the matter was referred to the Arbitration Tribunal and an Arbitrator has been appointed pursuant to Section 10(2) of the Arbitration and Conciliation Act, 1996. In such circumstances, this Court is of the view that the Executing Court ought not to have returned the Execution Petition. Therefore, this Court is inclined to allow the revision petition.

6. Accordingly, the Civil Revision Petition stands allowed and the order of return made in EP (Filing) No. 4842 of 2024 by the Executing Court is set aside. The learned Executing Judge is directed to number the execution petition and dispose of the same in accordance with law as expeditiously as possible. No costs.

01.04.2025

Note : Registry is directed to return the original papers to the counsel for the petitioner

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

1. The City Civil Court, Chennai.

2. The Union Of India.
   Principal Chief Engineer,
   Headquarter Office, Southern Railway,
   Park Town, Chennai-600003

3. The Section Officer,
   VR Section, High Court of Madras.

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A.D.JAGADISH CHANDIRA, J.

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C.R.P.No.1330 of 2025

01.04.2025
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