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O.S.A.Nos.187 &188 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.04.2026
Pronounced on	30.04.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

O.S.A.Nos.187 &188 of 2020
and C.M.P.Nos.9626 & 9671 of 2020

HDFC ERGO GENERAL Insurance Co Ltd.

1st Floor, HDFC House, 165-166 Backbay Reclamation,

H.T.Parekh Marg, Churchgate,

Mumbai -400 020

Represented by

Its Power of Attorney Holder,

Mr.C.J.Charles Vijayachandran

...Appellant in both appeals

Vs.



O.S.A.Nos.187 &188 of 2020

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M/s.ROHINI HOTELS MADRAS PVT LTD
No.43, Sarangapani Street,
T.Nagar, Chennai- 600017

...Respondents in
O.S.A.No.187 of 2020

M/s.ROHINI MOVIE PARK RUKMINI
No.43, Sarangapani Street,
T.Nagar, Chennai-600017

...Respondents in
O.S.A.No.188 of 2020

Common Prayer: Appeal filed under Order 36 Rule 1 of the O.S Rules read with Clause 15 of the Letters Patent and Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the judgment and decree dated 10.03.2020 passed in O.P.Nos.653 & 651 of 2019 on the file of Original Side of this Court.

For Appellant in both appeal : Mr.S.R.Rajagopal,
Senior Advocate
for Mr.S.M.Vivekanand

For Respondent in both appeal : Mr.M.S.Krishnan, Senior Advocate
for Mr.Mr.K.S.Karthik Raja



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COMMON JUDGMENT

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K. GOVINDARAJAN THILAKAVADI,J.

The appellant herein prefer these appeals against the orders dated 10.03.2020 passed by this Court in O.P.Nos.653 & 651 of 2019 which was filed under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after referred to "The Act") by the appellant herein.

The facts leading to file the present Original Side Appeal in O.S.A.No.187 of 2020 are as follows:

2.The appellant had issued a standard fire and special perils policy(herein after referred to "Policy") for a period of 12 months commencing from 05.06.2015 to the respondent which covered the respondent's property located at No.161, Anna Salai, Little Mount, Saidapet, Chennai. The total insured sum was Rs.7 Crores. The brake up of the insured sum was as follows:

a. Building including Plinth foundation and superstructure-

Rs.2,90,00,000/-

b. Plant and Machinery – Rs.2,80,00,000/-



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c. Furniture, fittings and fixtures – Rs.1,30,00,000/-

3.Subsequent to damage having been caused due to the Chennai floods of 2015, the respondent sent a claim intimation letter to the appellant on 03.12.2015 informing them that the property had suffered severe damage on 02.12.2015. The appellant then appointed a Surveyor on 08.12.2015 and the same was informed to the respondent.

4.The Surveyor on 29.12.2015 shared the working assessment of the loss which was Rs.35,00,000/-.

5.Since the insurance policy contemplated assessment of the loss to be made on the basis of reinstatement method of valuation which required the insured to reinstate the property to the way it was prior to the damage having taken place and submit the bills of the cost incurred for reinstatement to the insurer within 12 months from the date of claim intimation and since the respondent fails to submit all the necessary documents required by the Surveyor



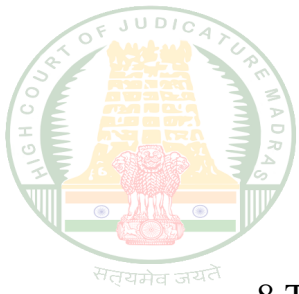
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to complete assessment of the claim, the representatives of the appellant and the respondent met on 04.04.2016 to discuss various aspects of the claim. In the said meeting, the difference between reinstatement valuation and market valuation was explained to the representatives of the respondent who then requested for the faster method of valuation i.e., market valuation method.

6.As it was consented by the respondent that the assessment could be carried out on the basis of market valuation and not reinstatement. After having been explained the difference between the two methods of valuation, an email was sent by the appellant to that effect on 04.04.2016. However, no representative of the respondent replied to the said email and did not raise any issue with the appellant citing the amendment of the method of loss assessment.

7.The Surveyor submitted his assessment of loss on 12.04.2016 after adjusting depreciation, salvage, and under insurance and not including the damaged portions of the property. The amount was Rs.67,92,046/-.

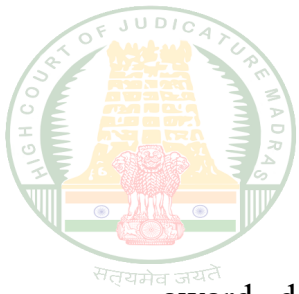


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8.The respondent failed to provide their concurrence on the assessment despite reminders sent to them on 02.05.2016, 10.05.2016 and 17.05.2016. The respondent vide letter dated 18.05.2016 raised a demand of Rs.5 Crores without any document to substantiate their claim and again on 17.06.2016 revised its demand to 12.31 crores. On 29.06.2016 the appellant replied to the respondent that the assessment made by the surveyor is most reasonable and correct one. The surveyor released its final survey report assessing the net liability of the appellant as Rs.67,92,046/- including an on account payments, if any. The surveyor also confirmed that no document evidencing reinstatement being done was provided to it by the respondent. The arbitrator passed an award on 19.04.2019 partly allowing the respondent's claim by overlooking their consent to amend the valuation method to market valuation and not continue with reinstatement valuation at the meeting held on 04.04.2016 and awarded the respondent a sum of Rs.2,72,74,817/- (after deducting Rs.35,00,000/- already paid and a sum of Rs.1,05,71,111/-).

9.As against the said arbitral award, the appellant preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the



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award dated 19.04.2019. The appellant had also made fixed deposit of Rs.3,01,64,810/- in favour of the Registrar General of this Court constituting the award amount and additional interest on the same. However, the learned District Judge by order dated 10.03.2020 dismissed the application filed by the appellant and imposed cost of Rs.50,000/- on the appellant.

10.The facts leading to file the present Original Side Appeal in O.S.A.No.188 of 2020 are as follows:

The appellant had issued a standard fire and special perils policy(herein after referred to "Policy") for the year 2014 -15 for a period of 12 months commencing from 30.12.2014 to the respondent which covered the respondent's property located at Koyambedu, Chennai. The total insured sum was Rs.37 Lakhs. The brake up of the insured sum was as follows:

- a. Building - Rs.15,00,000/-
- b. Furniture, fixtures and fittings – Rs.10,00,000/-
- c. Others – Rs.12,00,000/-



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11.Subsequent to damage having been caused due to the Chennai floods of 2015, the respondent sent a claim intimation letter to the appellant on 17.12.2015 informing them that the property had suffered severe damage on 02.12.2015. The appellant then appointed a Surveyor on 08.12.2015 and the same was informed to the respondent.

12.The Surveyor on 28.01.2016 shared the working assessment of the loss which was Rs.11,94,102/-. The Surveyor after having discussion with the respondent, shared a revised assessment of the loss which was Rs.13,07,569/- and requested the consent of the respondent to the same. The respondent consented to the Surveyor's assessment of the loss on 30.01.2016. All of this was premised on reinstatement of the damaged insurance property.

13.Since the insurance policy contemplated assessment of the loss to be made on the basis of reinstatement method of valuation which required the insured to reinstate the property to the way it was prior to the damage having

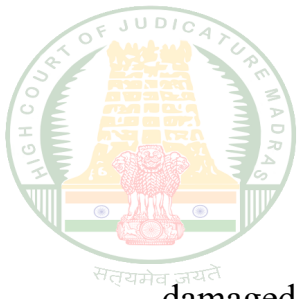


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taken place and submit the bills of the cost incurred for reinstatement to the insurer within 12 months from the date of claim intimation and since the respondent fails to submit all the necessary documents required by the Surveyor to complete assessment of the claim, the representatives of the appellant and the respondent met on 04.04.2016 to discuss various aspects of the claim. In the said meeting, the difference between reinstatement valuation and market valuation was explained to the representatives of the respondent who then requested for the faster method of valuation i.e., market valuation method.

14.As it was consented by the respondent that the assessment could be carried out on the basis of market valuation and not reinstatement. After having been explained the difference between the two methods of valuation, an email was sent by the appellant to that effect on 04.04.2016. However, no representative of the respondent replied to the said email and did not raise any issue with the appellant citing the amendment of the method of loss assessment.

15.The Surveyor submitted his assessment of loss on 12.04.2016 after adjusting depreciation, salvage, and under insurance and not including the



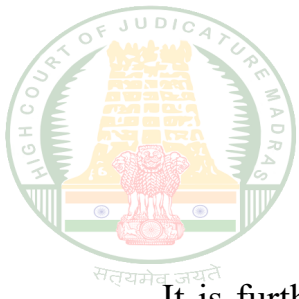
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damaged portions of the property. The amount was Rs.11,77,571/-.

16.The respondent failed to provide their concurrence on the assessment despite reminders sent to them on 19.04.2016, 02.05.2016, 10.05.2016 and 17.05.2016. The appellant then categorically informed the respondent by their email dated 17.05.2016 that in view of their silence, the claim would be settled as per the Surveyor's assessment. Therefore, the final settlement of Rs.11,77,329/- was done on 27.06.2016 after deducting the reinstatement premium of Rs.243/-.

17.On 11.07.2016 the respondent wrote to the appellant raising certain unfounded allegations and demanding that the appellant should settle the total claim of Rs.59,42,483/- and Rs.60,00,000/- as damages.

18.Subsequently, the appellant replied by way of email dated 27.07.2016 refuting each and every allegation and stated that the respondent had opted for market value assessment of the claim instead of reinstatement value assessment.



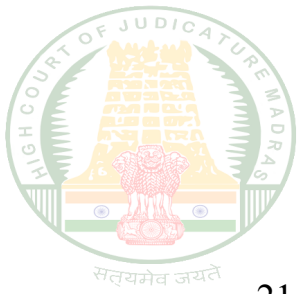
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It is further stated that the respondent had failed to reply to the email seeking their concurrence on the Surveyor's assessment and further stated that the policy did not cover consequential loss as had been claimed by the respondent.

19.The final survey report was issued by the Surveyor on 18.05.2016 in which the net liability of the appellant was found to be Rs.11,77,571/- after deducting salvage, underinsurance and depreciation.

20.Consequently, the respondent on 01.08.2016 informed the appellant that it sought to refer the dispute which had arisen between the parties to arbitration and accordingly, a sole arbitrator was appointed to adjudicate the matter. The arbitrator passed an award on 19.04.2019 partly allowing the respondent's claim by overlooking their consent to amend the valuation method to market valuation and not continue with reinstatement valuation at the meeting held on 04.04.2016 and awarded the respondent a sum of Rs.25,22,429/-.



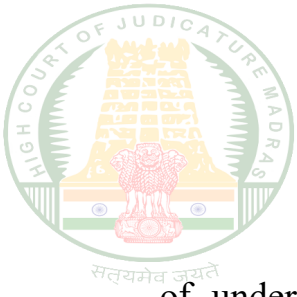
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21.As against the said arbitral award, the appellant preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 19.04.2019. The appellant had also made fixed deposit of Rs.28,99,531/- in favour of the Registrar General of this Court constituting the award amount and additional interest on the same. However, the learned District Judge by order dated 10.03.2020 dismissed the application filed by the appellant and imposed cost of Rs.50,000/- on the appellant.

22.Being aggrieved, the present appeals are filed.

23.The learned counsel appearing for the appellant would submit that the award passed by the sole arbitrator and affirmed by the learned Single Judge is unsustainable. The very observation that the under insurance is not applicable for reinstatement value policy clause is totally misconceived and in contravention with the fundamental policy of Indian law. Such observation allows the respondent to gain wrongfully and cause wrongful loss to the appellant and eventually loss of public money which the appellant holds in trust for the public. The Surveyor, while assessing the loss has highlighted the aspect

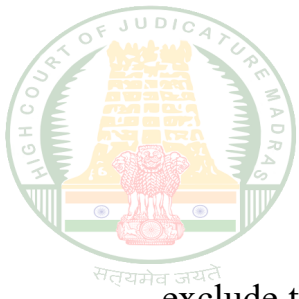


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of underinsurance. The respondent infact has accepted market value basis settlement in the meeting held on 04.04.2016 and has not challenged the valuation of property at risk, the value at which the property was insured, and thus the underinsurance percentage as mentioned in the Survey report is undisputed. The respondent did not produce any evidence to show that these figures suffers from any error or omission and this fact was ignored by the arbitrator and the learned Single Judge. Hence, impugned judgment passed by the learned Single Judge is patently illegal as it proceeds on the basis of no evidence at all.

24.As the contracts of insurance are based on utmost good faith, an insurer believes the declarations made by the proposer as true and correct. As such, the calculation of underinsurance is done at the time of loss and not at the time of issuance of the policy. The impugned judgment is in contravention with the fundamental public policy of Indian law as it upholds the patently illegal award passed by the arbitrator. He would further submit that when the insurance policy not covering parts of machinery which were required to be replaced due to normal wear and tear, the insurance company while assessing claim can



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exclude those parts. When no infirmity found in Surveyor's report the same can be accepted.

25.Further, he would submit that when there is apparently an element of underinsurance, the insurance company is justified in deducting the amount from the loss assessed. It is submitted that the value of an item is declared by insured at the time of issuance of policy while element of under insurance is calculated by insurer at the time of assessment of loss. To support his contention, he has relied upon the judgment in the case of *Sikka Papers Ltd., vs. NIC* reported in (2009) 7SCC 777.

26.His further contention is that the Tribunal cannot grant relief on the basis of conjectures and surmises and is bound by the basic rules of evidence. To support his contention, he has relied on the following judgments *Prasar Bharti V Starcon India Limited* reported in 2017 SCC Online Del 7856 and *Eureka Forbes Ltd., V.Allahabad Bank* reported in (2010) 6 SCC 193. He would further contend that the burden of proof lies on the insured to support his contention he has relied upon the judgement in *Bihar Supply Syndicate Vs.*



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Asiatic Navigation reported in ***(1993) 2 SCC 639, Assistant General Manager, State Bank of India Vs. Javied Enterprises*** reported in ***MANU/JK/0459/2021***.

The learned counsel further contended that as per 34(2)(b)(ii) if the award passed by the arbitrator is in contravention of public policy of India, it is liable to be set aside. To support his contention he has relied upon the judgement in the case of ***Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India*** reported in ***(2019) SCC Online SC 677, MMTC Limited Vs Vedanta Limited***, reported in ***(2019) 4 SCC 163 and Associate Builders Vs. Delhi Development Authority*** reported in ***(2015) 3 SCC 49***.

27.On the other hand, the learned counsel for the respondent would submit that the respondent in O.S.A.No.187 of 2020/Rohini Hotels Madras Private Limited is a private limited company, insured with L & T Company for a sum of Rs. Rs.7,00,00,000 and the Respondent in O.S.No.188 of 2020/Rohini Movie Park Rukmini insured with ICICI Lombard General Insurance Company for a sum of Rs.37,00,000/- which includes the buildings, plant and machinery, furniture, fixtures and fitting and others as set out in the agreement.

(b) Due to unprecedented rains and foods in Chennai in the month of

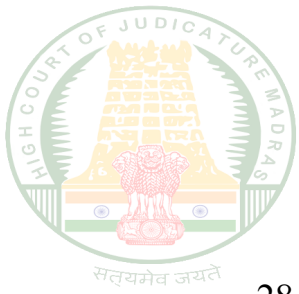


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November and December 2015 the entire buildings. plant and machinery, furniture, fixtures and fitting etc., were completely damaged. They were damaged on 02.12.2015 and immediately, the next day viz 03.12.2015, a claim was made with insurer. A representative visited the Hotel premises on 09.12.2015 and conducted a survey and completely assessed the damage. He also accepted the extent of damage. Thereafter, a detailed split-up calculation assessing the loss was intimated to the insurer. As per the respondent in O.S.A.No.187 of 2020, when asked for document, the Claimant replied that most of the documents were handed over and other documents were all washed away and hence, the assessment had to be made with the prevailing market rate of the damaged properties. Since there was no progress, the Claimant sent an e-mail dated 24.02.2016 pointing out the delay in settling the claim. While so, on 23.4.2016, one Mr. Sunil Arora sent an e-mail enclosing an assessment of loss towards the claim pertaining to the Claimant.

(c) Though claim was completely accepted for claims pertaining to plant and machinery, 50% was deducted towards depreciation. It is nowhere near to the present market value.

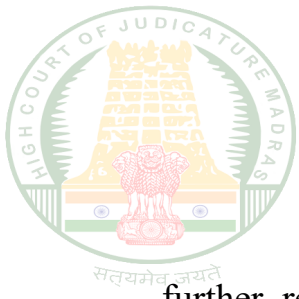


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28. When the Claimant was periodically carrying out repair works, there is no valid reason for depreciation and only a meagre sum of Rs.8,45,563.03/- was sanctioned instead of Rs.1,05,37,222/- for internal electrification. Thus, as against a claim of Rs.6,01,87,580/- only a sum of Rs.35,00,000/- was paid. The tribunal has rightly allowed the claim petition directing the respondent to pay a sum of Rs.2,72,74,817/- to the claimant with 10% interest from 13.12.2016 till the date of filing the claim petition.

29. As per the respondent in O.S.A.No.188 of 2020, the Claimant finding that there was no progress, sent an e-mail to one Sri.Arunkumar, representative of L & T. On 19.04.2016, Sri.Arunkumar sent an e-mail enclosing revised full and final settlement. The Claimant was shocked to see the revised settlement proposal, as it was against the terms and conditions agreed between the parties. As against the claim of Rs.65,41,083/- made by the Claimant, only a sum of Rs. 11,77,571/- was paid. Therefore, the Claimant sent a letter dated 11.07.2016 to settle the balance amount. However, a reply dated 27.07.2016 was sent with false statements, Hence, the Claimant by communication dated 01.08.2016 expressed displeasure and

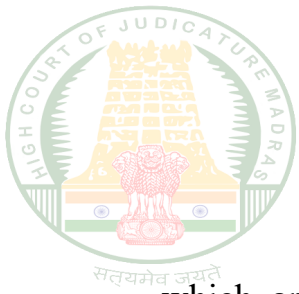


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further, requested for settlement through an Arbitrator.

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30.He would further submit that, the jurisdiction of the appellate Court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is duty of the appellate Court to consider whether the learned Single Judge has remained confined to the grounds of challenge that are available in petition under Section 34. The ultimate function of the appellate Court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate Court can exercise the same power and jurisdiction that learned Single Judge possess with the same constraints. His further contention is that patent illegality should be illegality which goes to the root of the matter. Every error of law committed by the arbitral tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorized as patent illegality. The Courts cannot re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of award, as Courts do not sit in appeal against the arbitral award. Only when conclusions of the arbitrator



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which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality.

That apart, several judicial pronouncement would become a dead letter if arbitral awards are set aside by categorizing them as perverse or patent illegal without appreciating the contours of the said expressions. Therefore, interference with an order made under Section 34, as per Section 37 is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. He would further contend that acceptance and intimation of acceptance of offer are therefore both necessary to result in a binding contract. Therefore, the communication of proposal is complete when it comes to the knowledge of the person to whom it is made. To support his contention he has relied upon the judgements in :

(1) (1966)1 SCR 656

(2) (2024) 7 SCC 218

(3) (2022) 1 SCC 131

(4) (2019) 4 SCC 163

Hence, prayed for setting aside the order dated 10.03.2020.



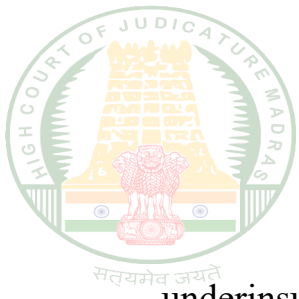
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31.Heard on both sides and records perused.

32.The specific contention of the learned counsel for the appellant is that, the arbitral tribunal has ignored the respondent's agreement to have its claim assessed on market value basis, giving rise to patent illegality in the impugned award. The difference between market value and reinstatement value assessment was explained to insured in detail and insured had requested for market value settlement for both claims. Further, the respondent failed to disclose the meeting that record its agreement for market value assessment but admitted during cross examination that the meeting did take place. The further contention is that, the respondent did not submit any proof of reinstatement and that the Tribunal has proceeded in violation of the contract and the survey report. The Tribunal has acted as a Court of Equity or Ex Aequeo Et Bono, by stating that the respondent had not agreed to the assessment of its claim on market value basis and that the Tribunal has given its own assessment without any basis with regard to the quantum of damage suffered by the respondent, excluding the surveyor's report and deductions on depreciation and

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underinsurance. The same is contrary to the very text of the contract between the parties. Therefore, the conclusion of the Arbitrator that denial of the claim on the ground that the policy has been converted from reinstatement policy into market value policy is incorrect is against public policy. The learned Single Judge failed to appreciate that the learned Arbitrator has wandered outside the terms contractually mandated by the policy.

33.It is not in dispute that, the claimant (O.S.A.No.187 of 2020) has insured the property for Rs.7,00,00,000/- and because of the depreciation made by the surveyor and taking into account, the property was under value, the loss was assessed at Rs.67,92,046/-. The claimant (O.S.A.No.188 of 2020) has insured the property for Rs.37,00,000/- and according to the surveyor, the depreciation was made since the property was under value.

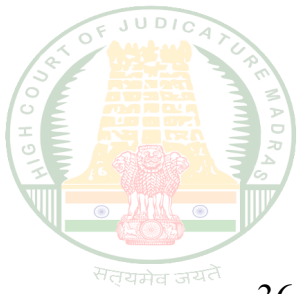
34.It is contended by the Insurance company that on 04.04.2016, after explaining the difference between the Reinstatement Value policy and Market Value policy, the claimant agreed for the Market Value basis. There is no evidence to show that the claimant was made to know that, if he opt for Market



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Value assessment, he will be indemnified only around Rs.65 lakhs as against the loss of Rs.4,70,82,740/- in O.S.A.No.187 of 2020 and around Rs.12,00,000/- as against the loss of Rs.55,00,000/ in O.S.No.188 of 2020. The petitioner/Insurance company has assessed the loss based on the Market Value policy assessment.

35.Admittedly, the terms of Insurance Policy is for 'Reinstatement Value Basis'. There is no Clause, which gives unilateral discretion to the Insurance Company to change the same into "Market Value Basis". Assuming that the conversion is permissible with the consent of the insured, any modification to the written agreement ought to have been in writing. It is the self serving statement of the official of the Insurance company that the claimant was explained about the difference between the reinstatement policy and the Market Value policy and the representative of the claimant agreed for the Market Value policy. No oral statement contrary to the written document can be relied upon unless proved otherwise.



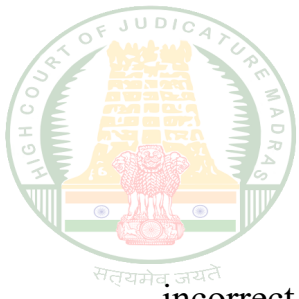
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36.As rightly pointed out by the learned Arbitrator, had the assessment been made on the basis of reinstatement value, such depreciation would not have been made and the claimant would have been settled a sum of Rs.7,00,00,000/- (O.S.A.No.187 of 2020) and a sum of Rs.37,00,000/- (O.S.A.No.188 of 2020) for which it has taken the policy.

37.Depreciation has been made since the surveyor has assessed the value on the basis of market value. Otherwise, depreciation would not have been made. Under valuation would also come into play only if the assessment of loss was made on the basis of market value. In case of assessment being made on the basis of reassessment value, the cost of replacing or reinstating the damaged property will alone be taken into account and the sum insured by the claimant may be sufficient for replacement/reinstatement of the damaged items.

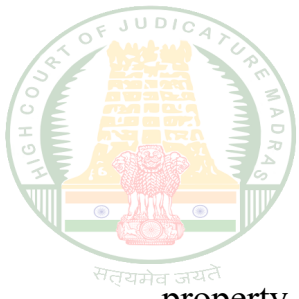
38.Hence, the Arbitrator has held that claimant had to be settled on the basis of Reinstatement Value and the assessment based on the Market Value is



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incorrect. Based on the Surveyor report (O.S.A.No.187 of 2020), the Arbitrator has held that the claimant is entitled for Rs.4,13,45,928/- for the loss of the property, which was insured under the petitioner. After deducting a sum of Rs.35 lakhs already paid and a sum of Rs.1,05,71,111/- towards salvage as calculated by the Surveyor a sum of Rs.2,72,74,817/- is fixed as money payable by the petitioner/Insurance Company to the claimant and in (O.S.A.No.188 of 2020), the Arbitrator has held that the claimant is entitled for the total sum insured i.e., Rs.37 lakhs for the loss of property which was insured under the appellant after deducting a sum of Rs.11,77,571 already paid.

39.The learned Single Judge has also rightly held that no person will agree for a conversion which is obviously detrimental to his interest, if he had been properly explained about the difference. In this context, the mail of the claimant dated 24.02.2016 gains significance. He has informed the Insurance Company that it is regretful to note that even after two months and after submission all details and papers relating to claim, they are delaying the settlement of the claim. For this the Insurance Company has not informed the claimant that under the insurance policy he should reinstate the damaged



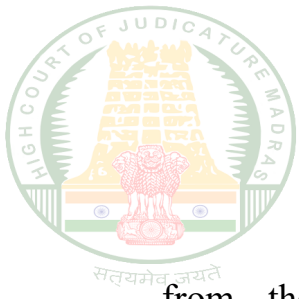
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property and make a claim and without reinstatement, they will not settle.

Instead, they have called the claimant to Mumbai for negotiations and contrary to the terms of the insurance policy, had forced the claimant to receive Rs.67,92,046/- (O.S.A.No.187 of 2020) and Rs.11,77,571/- (O.S.A.No.188 of 2020) towards full satisfaction as against Rs.5,90,89,142/- and Rs.37,Lakhs loss.

40.Further, the learned Single Judge has held that, having collected premium on a specific term that they will indemnify the loss to the insured on the basis of reinstatement policy as explained in clause under the reinstatement policy, the present assessment made under the Market Value policy without written consent of the insured is against the public policy, which is found to be sustainable.

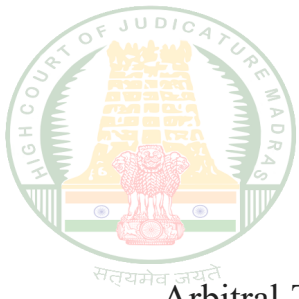
41.Therefore, the learned Arbitrator and the learned Single Judge have taken note of all these facts and has rightly pointed out that when the parties have agreed for Reinstatement Value policy and paid the premium the question of depreciation and under-insurance never arise. The e-mail communication



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from the Insurance Company to confirm and accept Rs.67,92,046/-, Rs.11,77,571 respectively is nowhere near the estimated loss of Rs.4,70,82,740/- and Rs.55,00,000/- respectively assessed by the Surveyors immediately after the occurrence. There is not a piece of documents to show that the Insurance Company has asked the claimant to first reinstate the property and claim the damages as per the insurance policy. There is not a piece of documents to show that the claimant has expressed his difficulty to reinstatement and opting for Market Value assessment. In fact as per the terms of agreement, the insurer has 12 months time to reinstate either in the same site or a different site. No infirmity is found in the award passed by the sole Arbitrator.

42.It is settled law that even otherwise the award is not open to challenge on the ground that the Arbitral Tribunal has reached a wrong conclusion. The Hon'ble Apex Court in the case of *Ssangyong Engineering & Construction Vs. National Highways Authority of India* reported in *AIR 2019 SC 5041* observed that the Courts could not substitute its view over that of the arbitrators and that it is not permissible for a Court to examine the correctness of the findings of the



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Arbitral Tribunal, as if it were sitting in appeal over the findings. It was further held that each Arbitrator is legitimately entitled to take the view which he holds correct.

43. Section 34 of the Act was deliberately engrafted and couched in a particular manner bearing in mind the fact that there should be limited intervention of Courts in Arbitral proceedings especially after the proceedings have been concluded and the award has been pronounced by the Arbitral Tribunal.

44. Notably, the yardsticks and the parameters under which intervention by the courts of law in the proceedings against the award stands bracketed in Section 34 of the Act which obviously starts with caveat that the Arbitral award may only be set aside by the Court if the party making the application establishes on the basis of the record of the Arbitral Tribunal:

- (i) was under some incapacity;*
- (ii) the Arbitral agreement is not valid under the law for the time being in force;*
- (iii) a party making the application was not given proper notice of appointment of arbitrator or he was*



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unable to present his case;

(iv) the Arbitral award deals with a dispute not contemplated or not falling within the terms of the submission of the arbitrator;

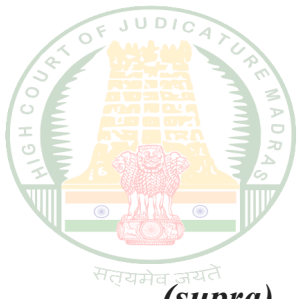
(v) the composition of the Arbitral Tribunal or the Arbitral procedure was not in accordance with the agreement of the parties unless such agreement was in conflict with the provisions;

(vi) the subject matter of dispute is not capable of settlement by arbitration under law for the time being in force;

(vii) the Arbitral award is in conflict with the public policy of India..

45.Nonetheless, while assailing the order passed under Section 34 of the Act either setting aside the award or upholding the award an appeal is provided under Section 37 of the Act, however, the contours of the proceedings under Section 37 also is limited to the scope and the ambit of challenge under Section 34 of the Act.

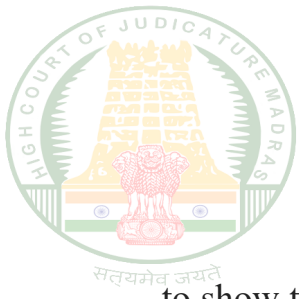
46.The aforesaid proposition of law stands culled out in umpteen number of decisions of the Hon'ble Apex Court, also in the case of *Associate Builders*



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(supra), Ssangyong Engineering & Construction Co. Ltd. (supra), Sal Udyog Private Limited (supra), PSA Sical Terminals Pvt. Ltd. (supra), Batliboi Environmental Engineers Vs. Hindustan Petroleum Corporation Limited & Another AIR (2024) SCC 375. The Apex Court in the case of ***Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (NHAI) (AIR 2019 SC 5041)*** has held that the additional ground made available for setting aside a domestic arbitral award under Sub-section (2A), added by the Amendment Act, 2015, to Section 34, refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. For the sake of clarity, the Court has held that the contravention of a statute not linked to public policy or public interest, which is not subsumed within the fundamental policy of Indian law cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. It is clear from the amendment of 2015 that re-appreciation of evidence, which is what an Appellate Court is permitted to do, is not permitted under the ground of patent illegality appearing on the face of the award.

47.In the present case, a judicial appreciation of the Arbitral award goes



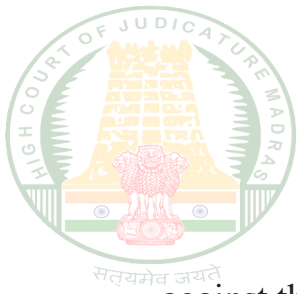
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to show that the learned Arbitrator has properly appreciated the facts of the case and has done a due analysis of the evidence led by the parties and has rendered his findings after due consideration, application of mind and on the touchstone of the law.

48.The learned Arbitrator has drawn inferences and conclusions after the factual appreciation in the light of the legal principles. The views of the learned Sole Arbitrator cannot be found fault with only for the reason that some other views can emerge by appreciating the same set of facts and evidence, until and unless it is shown that such a view is totally obnoxious and unsupported by the sound legal principles.

49.The learned Single Judge cannot substitute his own views or the views of the parties in place of the view taken by the learned Arbitral Tribunal, if the view taken by the learned Arbitrator is not in conflict with the settled legal position. There is nothing to suggest that the findings and conclusions rendered by the learned Arbitrator are *per se* perverse, illegal or non-sustainable. There is no ground to state that the award suffers "patent illegality" and the award is



against the public policy of Indian Law.

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50.By the amendment of 2015, Explanation as appearing in clause (b) in sub-section (2) of Section 34 of the said Act has been substituted by the new Explanations and Sub-Section 2-A has been inserted in Section 34 of the said Act. Amended clause (b) (ii) of Section 34 (2) reads as follow:

the arbitral award is in conflict with the public policy of India.

Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."

Newly inserted sub-Section 2A read as follow;



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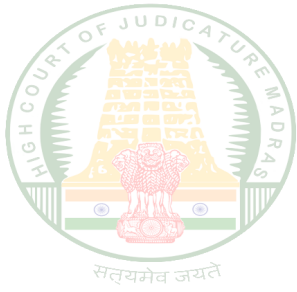


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"(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court if the Court finds that the award is vitiated by patent illegality appearing on the face of the award.

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciating evidence."

51.Viewing the case from four corners of law, we are of the firm opinion that the respondent herein has miserably failed to show any patent illegality in the Arbitral award warranting interference by the learned Single Judge under Section 34 application. More so, when the scope of interference under Section 34 is limited and within the contours of the ground specified under Section 34 of the Act. To put it otherwise, the award is not required to be set aside on the ground of mere erroneous application of law or by reappreciation of the evidence until and unless it suffers from patent illegality. We find the award is based on pleadings and available documents on record and that the award is a reasoned one and it is clearly a plausible view taking into account each and every aspect of the matter.



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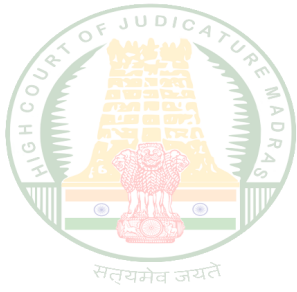
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52. Resultantly, the Original Side Appeals are dismissed. The orders passed by the learned Single Judge in O.P.Nos.653 & 651 of 2019 are confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

(P.V.J.,) (K.G.T.J.,)

30.04.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn



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**P.VELMURUGAN,J.
and
K.GOVINDARAJAN THILAKAVADI,J.
vsn**

**Pre-delivery Common judgment made in
O.S.A.Nos.187 &188 of 2020
and C.M.P.Nos.9626 & 9671 of 2020**

30.04.2026