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OSA No. 43 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON  
18.02.2026

PRONOUNCED ON  
02.04.2026

CORAM

**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN**

**AND**

**THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**OSA No. 43 of 2021**  
**and C.M.P.No.2426 of 2023**

1. K.Latha  
W/o. K.Kamalanathan, Resi At No.67/5,  
Kamdhar Nagar, 2nd St, Lakshmi Vista Aparts,  
D No.3, Mahalingapuram, Ch 34.
2. K.Sangeetha  
D/o. K.Kamalanathan, Resi At No.67/5,  
Kamdhar Nagar, 2nd St, Lakshmi Vista Aparts,  
D No.3, Mahalingapuram, Ch 34.

..Appellant(s)

Vs

1. P.Ravichandran  
T-2, Royal Srobam, Lawsons Road,  
Contonment, Trichy,
2. K.Ramya  
D/o. K.Kamalanathan, No.67/5, Kamdhar  
Nagar, 2nd St, Lakshmi Vista Parts, No.3,  
Mahalingapuram, Ch 34.

..Respondent(s)

**PRAYER:-** Original Side Appeal filed under Order XXXVI Rule 1 of the High Court, Madras Original Side r/w. Clause 15 of Letters Patent Act, to set aside the order and decreetal order dated 19.08.2019 made in OP NO.615 of 2017 and allow the OP.



For Appellant(s): M/s.V.Ramamurthy

For Respondent(s): Mr Arun Karthik Mohan for R1

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### **JUDGMENT**

**(Judgment of the Court was delivered by K.Kumaresh Babu J.)**

This appeal has been filed challenging the order dated 19.08.2019 passed by the learned Single Judge, whereby the Arbitral Award dated 28.06.2017 was upheld. By the said award, the learned Arbitrator allowed the claim of the respondent and rejected the counter claim of the appellants.

2) The brief facts leading to the present appeal are that the first respondent is engaged in real estate development, whereas the appellants are the owners of the subject property. The parties entered into a development agreement dated 21.02.2012, whereby it was agreed that the developed property would be shared in the ratio of 60% to the appellants and 40% to the first respondent. According to the first respondent, one Kamalanathan, who represented the appellants, caused delay and obstruction in the completion of the project, resulting in loss to the first respondent. Consequently, the first respondent claimed a sum of Rs.3,00,00,000/- as damages for the delay and loss allegedly caused by the acts of the said person. It is further stated that when the appellants had not paid the claim amount, the parties entered into an agreement to sell one of the flats situated on the fourth floor. However, subsequently, the



appellants allegedly prevented the first respondent from continuing the development work. The first respondent, by letter dated 16.07.2015, requested the appellants to extend cooperation and make the necessary payments. Upon receipt of the said letter, the appellants, by their communication dated 17.07.2015, allegedly threatened to cancel the power of attorney granted to the first respondent for the sale of the fourth flat.

3) Thereafter, the first respondent invoked the arbitration clause contained in the development agreement by issuing a letter dated 28.07.2015 and appointed an Arbitrator to resolve the disputes between the parties. Upon considering the claims and materials placed before him, the learned Arbitrator, by award dated 28.06.2017, allowed the claim of the first respondent and rejected the counter claim made by the appellants. Aggrieved by the said award, the appellants filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before this Court. The learned Single Judge, by order dated 19.08.2019, dismissed the application on the ground that the findings recorded by the learned Arbitrator were based on factual appreciation of evidence and that such findings cannot be re-appreciated or interfered with in proceedings under Section 34 of the Act. Challenging the said order, the present appeal has been filed.



4) Heard Mr. V. Ramamurthy, learned counsel appearing for the appellants and Mr. Arun Karthik Mohan, learned counsel appearing on behalf of the first respondent.

5) The learned counsel appearing for the appellants would submit that the learned Arbitrator failed to consider the report of the Engineer Commissioner, which had been obtained at the instance of the first respondent, and which clearly pointed out several defects in the construction. He would further submit that the first respondent failed to hand over possession of the property on or before 22.12.2014 or at least by 22.02.2015, as contemplated under the agreement. In this regard, the learned counsel would draw attention to the letter issued by the first respondent calling upon the appellants to pay the refundable interest-free deposit and take possession of the property. It was further contended that the learned Single Judge failed to take note of the fact that the first respondent had not taken adequate safety measures during the construction, which resulted in neighbouring residents lodging complaints with the police, leading to stoppage of the construction work. According to the appellants, it was one Kamalanathan, representing them, who intervened with the neighbours and the police authorities to enable the first respondent to continue the project.



6) The learned counsel would further submit that the refundable interest-free security deposit would arise only upon completion of the construction and handing over possession of the flats in accordance with the specifications stipulated in the agreement. However, the learned Arbitrator directed the appellants to refund the security deposit with interest and simultaneously hand over possession of the flats, which direction was mechanically affirmed by the learned Single Judge. It was also contended that the appellants had, even in the pre-arbitration legal notice, requested the first respondent to earmark one flat towards the security deposit and to hand over the remaining four flats to them. However, the said offer was not considered either by the learned Arbitrator or by the learned Single Judge.

7) The learned counsel further submitted that there is no direction in the arbitral award for completion of the construction, nor were the defects pointed out in the report of the Expert Engineer Commissioner considered. According to him, the original brochure provided that the doors and windows should be made of teak wood or UPVC; however, the same was unilaterally altered by the first respondent. It was further submitted that the report of the Expert Engineer clearly indicated gaps between the doors and door frames and that the doors and windows were improperly fixed. The learned counsel also contended that the learned Arbitrator had no jurisdiction to direct the appellants to pay property tax and water tax with interest. Further, the report of the Expert Engineer dated



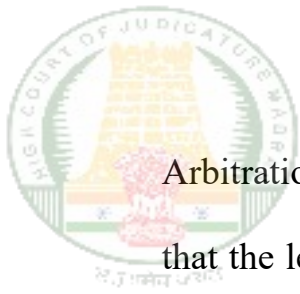
18.05.2016 indicated that certain works remained unfinished and that the building had not been completed in accordance with the agreed specifications.

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8) It was also argued that the first respondent had not produced any builder's salary slips or other supporting documents to substantiate the claim made under Ex.B10 and that the learned Arbitrator had accepted the claim without proper supporting evidence. Further, it was contended that as per the agreement, the first respondent was bound to bear the entire expenses for obtaining building plan approval for the construction. On the above grounds, the learned counsel prayed that the order passed by the learned Single Judge affirming the arbitral award be set aside.

9) Per contra, the learned counsel appearing for the first respondent submitted that the learned Single Judge had rightly upheld the arbitral award. According to him, the learned Arbitrator had considered all the issues on the basis of the materials placed before the Arbitral Tribunal and had arrived at a finding that the appellants were responsible for the delay in completion of the project.

10) The learned counsel further submitted that the learned Single Judge had rightly observed that the scope of interference under Section 34 of the



Arbitration and Conciliation Act is extremely limited. It was also pointed out that the learned Arbitrator had assessed the cost of construction per square foot and had arrived at a conclusion that the respondent was entitled to a sum of Rs.88,35,120/- towards statutory charges, premium FSI area and construction costs based on the evidence placed on record.

11) It was further submitted that the claims numbered 2 to 9 were also allowed by the learned Arbitrator on the basis of factual appreciation of evidence. The learned Single Judge had rightly held that when an arbitral award is based on relevant materials and evidence, such findings cannot be interfered with by the Court. It was also correctly held that the Court cannot re-appreciate the evidence merely because another view or interpretation may be possible under Section 34 of the Act. Therefore, the learned counsel prayed that the appeal be dismissed.

12) We have considered the rival submissions of the learned counsels for the respective parties and perused the materials available on record.

13) Before considering the rival submissions, it is necessary to bear in mind the limited scope of interference by the Court in matters arising out of arbitral awards. It is well settled that under Section 34 of the Arbitration and



Conciliation Act, 1996, the Court does not sit in appeal over the findings of the Arbitrator and cannot re-appreciate the evidence as if exercising appellate jurisdiction. The scope of interference is confined only to the grounds specifically enumerated under the statute, such as patent illegality, violation of fundamental policy of Indian law, or perversity apparent on the face of the award.

14) In the present case, the materials placed on record reveal that the learned Arbitrator had considered the pleadings of the parties, the documentary evidence produced before the Arbitral Tribunal and the rival submissions advanced on either side before arriving at the conclusion that the respondent was entitled to the amounts claimed and that the counter claim of the appellants was not sustainable. The learned Arbitrator has also examined the contractual obligations of the parties and recorded factual findings with regard to the delay in execution of the project and the financial consequences arising therefrom.

15) The learned Single Judge, while exercising jurisdiction under Section 34 of the Act, has also carefully examined the arbitral award and rightly held that the findings of the learned Arbitrator are essentially findings of fact based on appreciation of evidence. The learned Single Judge has further observed that



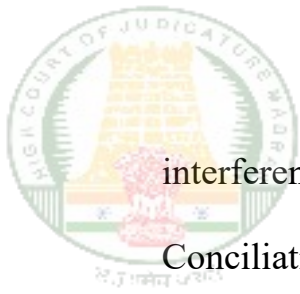
the arbitral award does not suffer from any patent illegality or perversity warranting interference under Section 34 of the Act.

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16) The contentions raised by the appellants before this Court essentially seek a re-appreciation of the evidence, including the report of the Engineer Commissioner, the alleged defects in construction and the obligations of the parties under the development agreement. Such an exercise is clearly impermissible in proceedings under Section 34 of the Act and equally so in an appeal under Section 37 of the Act. The Court cannot substitute its own view merely because another interpretation of the evidence is possible.

17) It is also pertinent to note that the learned Arbitrator has dealt with the claims and counter claims in detail and has assigned reasons for allowing the claims of the respondent while rejecting the counter claim of the appellants. When the arbitral award is a reasoned one and is based on the materials available on record, the Court would not be justified in interfering with the same in the absence of any demonstrable illegality.

18) In such circumstances, this Court finds no infirmity in the order passed by the learned Single Judge affirming the arbitral award. The appellants have failed to make out any ground falling within the limited scope of



interference contemplated under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996.

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Accordingly, the appeal stands dismissed. Connected miscellaneous petition is closed. No costs.

**(C.V.K.,J.) (K.B.,J.)**  
**.02.04.2026**

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

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**C.V.KARTHIKEYAN, J.  
AND  
K.KUMARESH BABU, J.**

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**A Pre-delivery order made in  
OSA No. 43 of 2021  
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**02.04.2026**