

CMA Nos. 2837 & 3982 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	16.06.2026
Pronounced on	16.07.2026

CORAM

**THE HON'BLE MR JUSTICE P. VELMURUGAN
AND
THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI**

**CMA Nos. 2837 & 3982 of 2019
and
CMP No. 14777 of 2019**

CMA No. 2837 of 2019

1.The Union Of India Rep By Deputy Chief
Engineer / Constructions,
Construction Office,
Southern Railway,
Podanur, Coimbatore Dist.

2.The Deputy Chief Engineer Construction,
Southern Railway,
Podanur, Coimbatore District.

..Appellant(s)

Vs

M/s.Savio Industries Structural Corporation, Opp
to Co Operative Industrial Estate, 96/5 K N Colony
Post, Salem, Cuddalore Main Road, Salem.

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Case Citation: (2026) ibclaw.in 3927 HC



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CMA No. 3982 of 2019

M/s.Savio Industrial And Structural Corporation
Opp. To Co-op.Industrial Estate, 96/5, K.N.Colony
Post, Salem-cuddalore Main Road, Salem-636 014

..Respondent(s)

..Appellant(s)

Vs

1.The Union Of IndiaRep By Deputy Chief
Engineer/construction,
Construction Office,
Southern Railway,
Podanur, Coimbatore District

2.The Deputy Chief Engineer/construction
Southern Railway,
Podanur,
Coimbatore District

..Respondent(s)

Prayer in **CMA No. 2837 of 2019**: This civil miscellaneous appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the order and decreetal order dated. 09.01.2019 passed by the Honble Principal District Judge, Salem in AR.O.P.No.4/2016.

Prayer in **CMA No. 3982 of 2019**: This civil miscellaneous appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996,r/w Order XLIII Rule 1 CPC, to set aside the order and decree dated 09.01.2019 passed in Ar.Op.No.4 of 2016 by the Principal District Judge, Salem and allow the Appeal.

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CMA No. 2837 of 2019

For Appellant(s): M/s.P.T.Ramkumar Central Govt. Counsel For Appellant (memo of Appearance Filed)
For Respondent(s): M/s.P.Mohanaraj For Sole Respondent

CMA No. 3982 of 2019

For Appellant(s) : M/s.P.Mohanaraj
For Respondent (s): M/s.P.T.Ramkumar Central Govt. Counsel For Respondents 1 & 2

Common Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

These civil miscellaneous appeals have been filed against the order and decree dated 09.01.2019 passed in AR.OP.No.4 of 2016 by the learned Principal District Judge, Salem.

2.The Savio Industrial and Structural Corporation is the appellant in C.M.A.No.3982 of 2019 and claimant in the Arbitral proceedings and petitioner in Arb.O.P.No.4 of 2016. The Southern Railways is the appellant in C.M.A.No.2837 of 2019 and respondent in Arbitral proceedings and respondent in Arb.O.P.No.4 of 2016.



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3. For the sake of convenience, the parties are referred to as per their ranking in the Arbitration O.P.

4. The facts leading to invoke the Arbitral Proceedings:

The Railways awarded the claimant a contract on 10.04.2007 worth Rs.59.78 lakhs for construction of a Road Over Bridge in lieu of Level Crossing (LC) No.126 between Ingur and Vijayamangalam, with a completion period of 14 months ending on 10.06.2008. The work involved two stages:

First, construction of a temporary level crossing about 1 km away from the existing crossing along with diversion roads connecting to the Perundurai–Tirupur Highway; and

Second, construction of the Road Over Bridge at the site of the existing level crossing. The temporary arrangement was necessary because of heavy traffic congestion and limited working space at the existing crossing. The claimant commenced the work immediately and completed the temporary level



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crossing and diversion roads by August 2007. However, despite completion of this phase, the Railways did not open the temporary crossing for traffic and consequently did not make the bridge construction site available to the claimant. After nearly eight months of delay, the temporary crossing was finally opened on 12.04.2008, and the claimant received this information on 15.04.2008 with instructions to commence the remaining work immediately. The claimant contends, that about eight months of the 14-month contract period were lost solely because of the Railways' delay in diverting traffic and handing over the site. Nevertheless, the Railways issued a 7-day notice on 17.04.2008, followed by a 48-hour notice on 25.04.2008, alleging non-performance. The contract was ultimately rescinded on 28.04.2008. The claimant's case is that the termination was arbitrary and unjustified because the delay in commencing the bridge work was caused by the Railways' own failure to timely open the temporary level crossing and provide a workable site.

5. According to the Railways, the claimant was awarded a risk and cost contract valued at ₹1,22,74,585 under Agreement No. DCE/CN/SA/15/07 dated 10.04.2007, with a completion period of 14 months ending on 09.06.2008. Although the Letter of Acceptance was issued in April 2007, the claimant



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submitted the required Performance Bank Guarantee only in September 2007, and the agreement was consequently executed on 20.09.2007. The Railways further submitted that, the earthwork for the road had already been completed before the execution of the agreement, and that the claimant completed the remaining road work only by September 2007. Despite the commissioning of the temporary level crossing and closure of the existing crossing to road traffic, the claimant failed to commence the bridge construction work. The Railways asserted that the claimant brought only limited materials, such as sheathing pipes and ITS wire, and did not bring the essential materials required for foundation and bridge construction. Repeated requests and reminders through letters and telephone calls to commence the urgent bridge work yielded no positive response. Consequently, a seven-day notice dated 17.04.2008 and a forty-eight-hour notice dated 25.04.2008 were issued. As there was still no improvement or commencement of work, the contract was rescinded through a termination notice dated 28.04.2008. The Railways further submitted that the claimant had abandoned the work, causing inconvenience to the public, and therefore the claimant was not entitled to claim damages or loss of profit without executing the contract, warranting dismissal of the claims.



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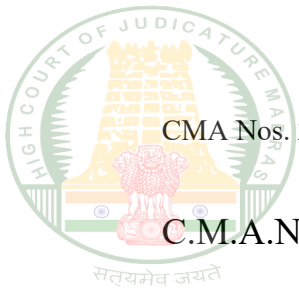
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6.The learned Arbitral Tribunal granted partial relief in respect of claim No.3 and rejected all other claims. Aggrieved by this, the claimant has preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the arbitral award dated 16.09.2015 in O.P.No.4 of 2016. Though, the counter claim filed by the Railways was also rejected, the respondents have not filed any petition.

7.The learned District Judge, has held that the claimant is entitled for the claim Nos.1, 2 to the full extent and in respect of claim No.6, the learned Judge has held that the claimant is entitled only for a sum of Rs.7,61,430/- and also awarded a sum of Rs.50,000/- towards cost of the litigation as claimed in Claim No.9 and declined the other claims.

8.Aggrieved by this, the claimant has preferred the appeal in C.M.A.No.3982 of 2019 and the Railways preferred the appeal in C.M.A.No.2837 of 2019.

9.Mr.P.T.Ramkumar, the learned counsel appearing for the Railways in



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C.M.A.No.2837 of 2019 would submit that the risk and cost contract has been

awarded to the claimant to the value of Rs.1,22,74,585/- vide agreement No.DCE/CN/SA/15/17 dated 20.09.2007 with the completion period of 14 months i.e., till 09.06.2008, to that effect an agreement was executed on 20.09.2007. However, the claimant was not keen to start the work even after informing the importance of the work several times. Hence, a 7 days notice was issued on 17.04.2018 followed by a 48 hours notice, issued on 25.04.2008 as per Clause 49 and 50 of Special conditions of the agreement, and thereafter, the contract was rescinded through a termination notice dated 28.04.2008 resulting in forfeiting the earnest money and encashment of performance guarantee. His further contention is that, at no point of time, the Railways ever prevented the claimant to execute the work. The work was terminated only due to the abandonment of the work by the claimant and thus claim for loss of profit is not justifiable. Further, no document was produced by the claimant to show how much profit could have been earned by him from such work. Except producing some notional calculation, no other evidence is produced on the side of the claimant to show the real profit. Since the claimant failed to produce sufficient evidence to establish claimed loss of profit, the learned counsel would submit that he is not entitled claim No.6. To support his contention, he has relied upon



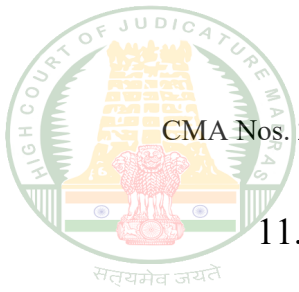
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the judgement in *Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd* reported in

AIR 2023 Supreme Court 838. Hence, prayed for setting aside the order passed

by the learned District Judge.

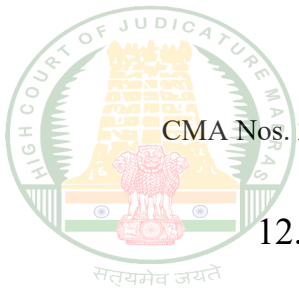
10. On the other hand, learned counsel for the claimant would submit that the nature of contract work was such it has to be performed in two phases. The first phase was of erecting a temporary level crossing (L.C.) with diversion roads on its either side so as to divert the existing road traffic away from the present LC No126. Once the diversion road is ready, the Railways were to immediately divert the usual road traffic from LC.126, through the temporary level crossing and hand over the existing LC No. 126 site to the claimant to start the second phase work of construction of the clear span Pre-stressed Concrete (PS) box girder of the proposed Road Over Bridge. Thus, it is a matter of fact that to start the said second phase work diverting the road traffic from existing LC.126 site was very much essential to take up the bridge construction, since there was no working space near to that LC because of heavy road traffic congestion round the clock.



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11. The learned counsel further submits that the claimant has promptly commenced the work on the very same day of Letter of Acceptance (LOA) i.e, on 10.04.2007 and the first phase of work namely the temporary level crossing fixing and laying diversion roads, was completed by August, 2007 in five months as programmed. Thereupon the Railways had to divert the road traffic from 01.09.2007 onwards through the temporary level crossing. Though the agreement particularly stipulates the work of contract as stated supra, the said two phases must be completed forthwith by 14 months period continuously and no time gap was given to the claimant. But the Railways delayed 8 months to divert the traffic from existing level crossing L.C No.126 to temporary level crossing. Finally after eight months indefinite delay, only on 12.04.2008 the Railways have sent a letter to the claimant informing that the new LC was opened to road traffic which was received by the claimant only on 15.04.2008 and further stated in the said letter that,

"the Appellant was required to commence the construction work of Road Over Bridge and complete it within agreement period that within next two months as per contract concluded on 09.06.2008".



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12. Thereafter, before even the continuation of work could act, within 10 days time the Railways have sent agreement contemplated pre-terminal notices to the claimant and rescinded the contract on 28.04.2008 on the ground that the claimant could not complete the work within the agreed period of 14 months. This unusual hasty action of the Railways was to conceal their administrative lapses in the undue delay in diverting traffic through the temporary level crossing. the Railways blamed the claimant by sending letters one after another dated 17.04.2008, 25.04.2008 and 28.04.2008 without giving the mandated time gap between notices to reply for. While the facts remained so, that the Railways' termination of contract was against the terms of Agreement and grossly illegal and unfair, therefore the claimant represented the matter to the General Manager, Southern Railways, Chennai by his letter dated 10.07.2008 to appoint the Arbitral Tribunal under clause 64 of Railway GCC to look into the unfair rescinding of contract in midway for which he has to be compensated by pecuniary damages under 9 different heads, as Claim No.1 to refund the security deposit amount, Claim No.2 to refund the performance guarantee amount, Claim No.3 to settle the dues for already work done under terminated contract, Claim No.4 to pay idle period paid wages to workers, Claim No.5 to pay compensation as rent for keeping infrastructure material idle, Claim No.6 to pay



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for the loss of anticipated profit from terminated contract, Claim No.7 to reimbursement of handling transport charges in returning the tools, PSC accessories and cribs and other equipment brought to site and returned to Railways stores, Podanur Claim No. 8 to pay interest as per law, Claim No.9 to pay legal and technical counsel fee, all the claims totaling a sum of Rs.59,78,000. In response the GM, S.Railway appointed the Arbitral Tribunal and referred the entire Claims of the claimant to the Tribunal. The Railways also made a counter claim of Rs.51,750/-. The Arbitral Tribunal adjudicated the matter and passed an award on 16.09.2015 awarding a sum of Rs.5,73,724/-to the claimant. It is submitted that though the claimant has exposed his loss under nine captions with clear description filed before the Railways' Arbitral Tribunal, the Arbitral Tribunal out of 9 Claims, granted Claim No.3 alone and other 8 claims were declined. Aggrieved against the Tribunal award, the claimant preferred an appeal under Section 34 of the Arbitration and Conciliation Act, 1996 in Arbitral O.P.No.4 of 2016 before the Principal District Judge, Salem. Though, the learned Principal District Judge rightly held that termination is arbitrary and illegal, erred in granting claim Nos.1, 2,3 & 6 alone. Hence, the Claimant preferred the present appeal.



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13. Heard on both sides and records perused.

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14. The Railways are concerned with claim Nos. 1, 2, 6 & 9 which has been allowed by the learned District Judge. Whereas the claimant is concerned with the further claims that have been negatived by the learned Arbitrator and the learned District Judge and it is further submitted that the learned District Judge failed to award claim No. 3 which was awarded by the learned Arbitrator. Now, it has to be seen whether the learned District Judge was justified in allowing claim Nos. 1, 2, 6 & 9.

15. Before the Arbitral Tribunal the claimant has submitted that only the Railways had breached the agreement. Having breached the agreement it is only incumbent on the Railways as per section 73 of the Indian Contract Act of 1872 to make good the damages resulting from the breach inflicted upon the claimant. Under such circumstances, forfeiting the security deposit of Rs. 6.14 lacks and performance guarantee of another Rs. 6.14 lakhs submitted in this agreement account and withholding of the balance payment Rs. 6.00 lakhs due from the items of road and temporary level crossing works executed is unwarranted and illegal. Hence, prayed for refund of these three amounts with



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due interest. He further submitted that since the Railways has breached the contract, the claimants profit from this contract is affected and the same has to be compensated.

16.The same was objected by the Railways stating that, even after commissioning of the temporary level crossing gate and the existing gate was closed for road traffic, there was no sign of commencement of work. Further, it was submitted that, at no point of time the claimant had brought to the site any materials for foundation and construction works except materials like sheathing pipe and HTS wire. Knowing well that the bridge work is supposed to be started immediately and despite letters and telephonically informed to the claimant the urgency of work, there was no positive action on the side of the claimant to start the work. Hence, the contract was rescinded as per Clause 50.0(2) of the agreement and consequently, security deposit was forfeited and the performance guarantee was encashed.

17.The learned Arbitral Tribunal noted that it was a risk and cost contract awarded to the claimant. He also noted that since the claimant failed to start the work, a 7 days notice was issued on 17.04.2008 followed by a 48 hours notice



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on 25.04.2008 and termination notice was issued on 28.04.2008.

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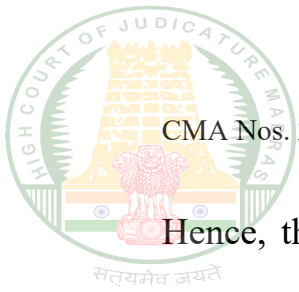
18.It is also noted that by letter dated 12.04.2008, the Railways informed the claimant about the diversion open for the traffic and to start the work. However, there was no sign of commencement of work by the claimant, even after receipt of the communication on 15.04.2008. The learned Arbitrator also observed that the claimant had mobilized only for superstructure and nothing was mobilized for foundation and substructure and held that the work of superstructure cannot be started without completing the foundation and substructure. He had also noted that the claimant failed to establish that the materials and labour were kept idling. The learned Tribunal further held that wrong termination of contract was not an original item referred to Tribunal by General Manager in terms of reference. Therefore, it is a new item and cannot be allowed as per Clause 64 (1)(ii) of GCC. Since wrong termination is not an original claim, the learned Tribunal held that other claims on the basis of wrong termination are not justified and acceptable. Further, the learned Tribunal noted that Clause 64.6 of GCC provides for bearing the cost of Arbitration by respective parties. As per Clause 31(8) of A & C Act, 1996, cost is not payable if the same is otherwise agreed not to be paid by the parties. Hence, the learned



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Arbitrator disallowed claim No.9 and held that no amount can be awarded towards cost. Accordingly, the learned Tribunal declined the other claims made by the claimant and granted claim No.3 alone for the work done by the claimant. Since the claimant failed to execute the work within the stipulated time as per the agreement and also failed to substantiate the claim of loss of profitability, the learned Arbitrator rightly rejected all other claims except claim No.3.

19.In the instant case, the learned District Judge, while considering claim Nos.1, 2, 6 & 9, found fault with the award passed by the learned Arbitrator. This itself is going outside the jurisdiction to set aside an award under Section 34 of the Arbitration and Conciliation Act, 1996, in view of the law laid down by the Hon'ble Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd.*, reported in (2006) 11 SCC 181, having regard to the facts and circumstances of this case, would eminently fall within the domain of the Arbitrator. Obviously, the learned District Judge has exceeded its jurisdiction in interfering with a possible view of the Arbitrator on facts. The learned District Judge interfered with a number of pure findings of fact, forgetting that the Arbitrator is the sole judge of the quantity and quality of evidence before him.



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Hence, the learned Arbitrator has considered the claims separately and found that it was not the Railways, which was responsible for the delay and rejected the other claims except claim No.3. While so, the learned District Judge unnecessarily brought in facts that were not proved on record and ignored the vital facts that the claimant failed to complete the work within the stipulated time as per the agreement. Having gone through all the claims, the Arbitrator found that the claimant is entitled only for claim No.3, for the work done, and rejected the other claims on the ground that though the claimant urged that the delay in the extension of work was due to lapses and default of the Railways from the very commencement of the work, on record it is conclusively proved that only the claimant committed breach of contract as they failed to discharge their obligations in time, resulting in prolongation. A judicial appreciation of the Arbitral award goes 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. The learned Arbitrator, by a reasoned award, held that the entire delay in the execution of work was because of the claimant. The learned Arbitrator has laboriously gone through all the evidence and answered each claim, giving reasons for the same, and held that none of the



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delay is attributable to the Railways. The award, read as a whole, is just, fair and reasonable, and therefore, only claim No.3 has been granted and the other claims, which are supported with reasons, have been negated. No error of law arises from the award, and the award has, therefore, been wrongly modified by the learned District Judge. The learned Arbitrator has passed an award which is not in conflict with the public policy of India.

20. Further, the legal position is that, a Section 34 Court has a limited power to modify an arbitral award. The Hon'ble Supreme Court in *Gayathri Balasamy Vs. M/s. ISG NOVASOFT Technologies Ltd.*, case reported in 2025 INSC 605 ruled that Courts can modify awards only under very specific circumstances. The Courts authority to modify an award under Section 34 is strictly restricted to three scenarios.

1. **Severability**; If the valid parts of an award can be completely separated from the invalid parts without affecting the rest, the Court can remove the invalid portions.

2. **Typographical / Clerical errors**; The Court can rectify computational, clerical or typographical errors that appear clearly on the face of



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3. Post Award Interest; The Court can modify post award interest if the Tribunal's rate does not adhere to the standards prescribed under the Arbitration Act.

21. Therefore, Courts acting under Section 34 do not act as a standard appellate Authority. Courts cannot re evaluate facts, re-examine evidence, or substitute the Tribunal's finding with their own judgement. If an error requires a substantive re examination of the merits of the dispute, the Court generally cannot modify it on its own and must set aside the award or ask the parties to return to the Tribunal. Moreover, it is settled law that 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 arbitrator and that it is not permissible for a Court to examine the correctness of the findings of the 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. Hence, the order passed by the learned District Judge is set aside and the award is restored in entirety.



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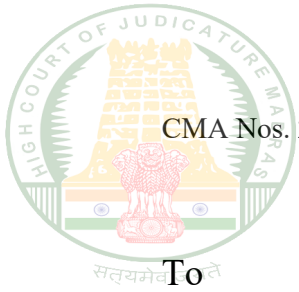
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22. In the result, C.M.A.No.2837 of 2019 stands allowed and C.M.A.No. 3982 of 2019 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(P.V.,J.) (K.G.T.,J.)
16-07-2026

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

vsn



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CMA No. 2837 of 2019

To

M/s.Savio IndustriesStructural Corporation, Opp
To Co Operative Industrial Estate, 96/5 K N
Colony Post, Salem, Cuddalore Main Road, Salem.

CMA No. 3982 of 2019

To

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**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

VSN

Pre-delivery common judgement made in

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16-07-2026