IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 29-06-2026**

**Pronounced on : 17-07-2026**

CORAM

**THE HON'BLE MR JUSTICE P. VELMURUGAN**

**AND**

**THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI**

**OSA Nos. 128 & 129 of 2020**
**AND**
**CMP Nos. 6164 and 6194 of 2020**

M/s.Rainbow Foundations Ltd.,
Rep. by Its Managing Partner,
Anoop Chand Jain,
No.32, South Usman Road, T.Nagar,
Chennai-600017

..Appellant

Vs

1.A.Murugan

2.M.Venkatachalam Ramakrishnan

3.AlameluChandrasekaran @ Geetha

4.Neha Krishnan

5.R. Baba Shankar

6.P.Dinesh Kumar

7.Hon’ble Mr.Justice D. Raju (Retd.)
No.34, Pooram Prakasam Street, Balaji Nagar,
Royapettah, Chennai-600 014

..Respondents

**OSA No. 129 of 2020**

M/s.Rainbow Foundationa Ltd.,
Rep by its Managing Partner,
Anoop Chand Jain,
No.12, South Usman Road, T.Nagar,
Chennai-600 017.

..Appellant

Vs

1.R.Baba Shankar

2.A. Murugan

3.M. Venkatachalam Ramakrishnan

4.Alamelu Chandrasekaran @ Geetha

5.Neha Krishnan,

6.P. Dinesh Kumar

7.Honourable Mr. Justice D. Raju (Retd.)
No.34, Pooram Prakasam Street, Balaji Nagar,
Royapettah, Chennai-600 014.

..Respondents

**Common Prayer**: Original Side Appeals are filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent read with Section 37(1)(C) of the Arbitration and Conciliation Act, 1996 against the common judgment and decree made in O.P.Nos.698 and 711 of 2012 dated 26.11.2019.

For Appellant: Mr.R.Thiagarajan (in both appeals)

For Respondents: Mr.P.V. Balasubramaniam
Senior Advocate
for Mr.E.Sathish Kumar and Ms.S. Ranjani
for R5 in OSA No.128/2020
for R1 in OSA No.129/2020.

Mr.P.V. Balasubramaniam
Senior Advocate
for Mr.D. Sairamkumar
for R1 to R4 in OSA No.128/2020
for R2 to R5 in OSA No.129/2020

R6 – No appearance (in both appeals)

**Common Judgment**

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

The appellant/claimant is a promoter/developer of real estate properties, in the field of construction and formation of layouts. The appellant had been on the look out for a property in the suburban of Chennai and accordingly identified the properties of the respondents and entered into a sale agreement along with one P.Dinesh Kumar in respect of the property situate at Village No.126, Nemili Group Beemanthangal Village, Sriperumpudur Taluk, comprised in S.No.331/2, measuring to an extent of 9 acres 46 cents for a sale consideration of Rs.5 crores and made a payment of Rs.1 crore as advance and agreed to pay the balance sale consideration of Rs.4 crores at the time of execution and registration of sale deed or within a period of 30 days from the date of agreement of sale.

2. The sale agreement was drawn at Chennai and terms were mutually agreed upon by one R. Baba Shankar, owner of one set of properties and (1) Murugan, (2), Venkatachalam Ramakrishnan, (3) Alamelu Chandrasekaran @ Geetha, (4) Neha Krishnala, owners of other parcels of land. Both the groups agreed to jointly sell the properties for a sale consideration of Rs.5 crores, in favour of M/s. Rainbow Foundation Limited and P. Dinesh Kumar.

3.Subsequently, the said Baba Shankar paid a sum of Rs.37,50,000/- to P.Dinesh Kumar, in consideration of his investments. When the appellant / claimant sought for enforcement of the contract, the owners/vendors raised frivolous, vexatious stand as if the purchasers have forfeited their rights, on account of the alleged breach. The appellant and P. Dinesh Kumar, invoked the Arbitration Clause contained in the agreement for the sale agreement dated 08.06.2006. An Award was passed on 20.08.2012, against which a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short A&C Act, 1996) in O.P. No.698 of 2012 was preferred by M/s. (1) Murugan, (2), Venkatachalam Ramakrishnan, (3) Alamelu Chandrasekaran @ Geetha, (4) Neha Krishnan, for setting aside Award dated 20.08.2012 passed by the Sole Arbitrator. Another petition under Section 34 of the A&C Act, 1996, in O.P.

No.711/2012 was filed by R. Baba Shankar for setting aside the said Award.

4. The learned Single Judge while setting aside the Award dated 20.08.2012 directed the appellant to initiate appropriate legal proceedings for refund of the advance sale consideration paid by the appellant along with interest.

5. Aggrieved by this, the present appeals are preferred by the appellant / purchaser company.

6. Mr. R. Thiagarajan, the learned counsel for the appellant would submit that the scope of interference of the Court with the Arbitral matters is virtually prohibited, if not absolutely barred. The powers of the appellate court are even more restricted than the powers conferred by Section 34 of the A & C Act, 1996, and that the award of the Arbitral Tribunal cannot be touched unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement and relied on the judgment reported in ***Jan de Nul Dredging India Pvt. Ltd., vs Tuticorin Port Trust (Civil Appeal arising out of S.L.P. (C) No.8803 of 2021) reported in (2026) INSC 34.*** He would further submit that once the Arbitrator has interpreted clauses of contract by taking a possible view and had gone to great lengths to analysis several reasons offered

by the claimants to justify its plea that it was entitled to extension of time to execute the contract, under Section 34 of the A&C Act, 1996, the Court ought not to have sat over the said decision as an appellate court seeking to substitute its view for that of the Arbitrator. Therefore, under no circumstances any Court can interfere with an Arbitral Award on the ground that justice has not been done in the opinion of the Court, which would be an entry into the merits of the dispute, which is contrary to the ethos of Section 34 of the A&C Act,1996. He further submitted that the Award can be set aside only when it is allegedly contrary to public policy of India, being violative of Indian statute and allegedly effected and induced by fraud and that the petition under Section 34 of the A&C Act, 1996, is not a traditional appeal but only a challenge to an Award on limited grounds adumbrated in Section itself and cannot be treated as an appeal, Review or Revision.

6.1. The learned counsel would further submit that the settled legal position is that time is not the essence of an agreement of sale relating to immovable property. In this connection, he referred to and relied upon the judgment of a Five Judge Bench of the Hon'ble Supreme Court in **Chand Rani (SMT) (Dead) by L.R.s. vs. Kamal Rani (Smt) (Dead) by L.R.s (1993) 1 SCC 519.** His next submission was that the Specific Relief Act, 1963 and, in particular, the explanation to Section 16(c) thereof makes it clear that it is not necessary for the purchasers to make payment and that as long as the purchasers demonstrate that they were ready and willing and had the wherewithal to pay, they are entitled to specific performance and that it is not necessary to produce money or cash to prove readiness and willingness ***(Ref: N.P. Thirugnanam v. R. Jagan Mohan Rao*** reported in ***(1995) 5 SCC 115*** and **His Holiness *Acharya Swami Ganesh Dassji vs. Sita Ram Thapar*** reported in ***(1996) 4 SCC 526).*** His next submission was that the Vendors did not act in good faith and that this is evidenced by the execution of a Sale Deed dated 09.02.2009 in favour of one Rajesh Shankar, son of the 5th respondent Mr.Baba Shankar, for the nominal sale consideration of Rs.20 lakhs and by the execution of a Settlement Deed dated 09.03.2009, once again, in his favour. In other words, his submission was that the said transactions were entered into with the mala fide intention of defeating the legitimate rights of the Purchasers under the Agreement. In this regard, he submitted that the conduct of parties is an important factor to be considered in proceedings for specific performance**.** He also referred to the notice dated 09.07.2006(Ex.C7) and pointed out as to how the date of the said notice had been tampered with. He further submitted that the Purchasers had established that they had the capacity to pay the balance sale consideration on 07.07.2006 by providing a certificate from their bank, namely, the Catholic Syrian Bank Ltd., wherein it was stated that they had overdraft facilities to the extent of Rs.4,85,00,000/- as on 06.07.2006. He also referred to the Panjangam in respect of the relevant period to point out that 05.07.2006 and 06.07.2006 were inauspicious days for the conclusion of a transaction. He further submitted that the Agreement, in this case, is indivisible and although the 6th respondent attempted to settle the matter with the Vendors, the other purchaser is entitled to specific performance. He also referred to Ex.R19, which is a letter dated 22.12.2006 from Mr. P.Dinesh Kumar, and pointed out as to how the said document mentions the address of the sender, namely, P.Dineshkumar, wrongly and he contended that this shows that the document is fabricated. He also referred to Ex.R9, which is the letter dated 05.07.2006 from the vendor's broker, and pointed out that this document has been created for the purposes of the case and was rightly rejected as unreliable and fabricated, by the learned Arbitrator. He also referred to the alleged receipt issued by Dinesh Kumar(Ex.R16), and pointed out as to how the alleged execution of the said receipt was witnessed by the Vendors' broker and by the wife of Baba Shankar and that, therefore, the said document cannot be relied upon. He also referred to Ex.R20, which is a letter from Canara Bank to Mr. Baba Shankar, with regard to the fixed deposit accounts as on 09.07.2006 and pointed out that the said document had also been created for the purpose of the case.

6.2. He further contended that, even if one of the purchaser / promisee had received the advance money, a contract may be enforced by a joint promisee even if the other joint promisee entered into a compromise (Ref: **G. Jayashree vs. Bhagwandas S. Patel** reported in **(2009) 3 SCC 141);** that a suit for specific performance of a terminated agreement for sale was not maintainable without seeking a declaration that the termination was unlawful (Ref: **I.S. Sikandar vs. K. Subramani** reported in **(2013)15 SCC 27);** that it is not necessary to produce the money or cash to prove readiness and willingness (Ref: **A. Kanthamani vs. Nasreen Ahmed** reported in **(2017) 4 SCC 654);** that the subsequent sale at a lower price was intended to defeat the legitimate claim of the purchaser (Ref: **Judgment of Delhi High Court dated 18.03.2014 in the case of Dharampal Satyapal Ltd. vs. Sanmati Trading and Investment in C.S. No.320 of 2006,);** the suit for specific performance is maintainable even in the absence of a prayer for declaration that the termination is bad in law (**Ref**: **Judgment of Delhi High Court dated 31.05.2019 in the case of Kushal Infraproject Industries India Ltd. vs. Dalel Singh , in C.S. No. 2170 of 2013,);** that a petition under Section 34 of the Arbitration Act is a challenge to the award and not an appeal (**Ref: V.S.Ekambaram, Proprietor, Sangupani Fuels vs. Sri Krishna Tiles and Potteries(Madras) Pvt Ltd.** reported in **(2017) 5 CTC 420);** that only where fraud or compromised integrity is established or the award is plainly erroneous and against the stated position of law, it should be set aside (Ref: **Interbulk Trading SA vs. Adam and Coal Resources Private Limited** reported in **(2017) 2 CTC 491)** and that the award could not be interfered with because there was no error apparent on the face of the record, perversity, patent illegality or violation of public policy (Ref: **Marg Limited vs. Van Oord Dredging & Marine Contractors BV and others** reported in **(2018) 6 CTC 609).**

6.3. He would further refer to the judgment of this Court in **Himayam Engineers and Builders vs. S. Ravichandran** reported in **MANU/TN/2768/2017,** wherein this Court ordered specific performance of a development agreement notwithstanding the purported termination thereof. Further, he referred to the judgment of the Division Bench of this Court in **Madras Port Trust vs. S & S Enviro Technologies Ltd.,** reported in **(2018) 3 CTC 337),** wherein this Court considered the law in respect of challenges to arbitral awards and declined to set aside an award of loss of profits. Hence prayed for setting aside the impugned order passed by the learned Single Judge in the Section 34 petition.

7. On the other hand, Mr.P.V. Balasubramaniam, learned Senior Advocate appearing for the respondents 1 to 5 would submit that, the Clause 3 of the Sale Agreement dated 08.06.2006 specifies the time limit of 30 days from the date of the agreement, which expired on 07.07.2006. On account of the default by the purchasers in paying the balance sale consideration on or before 07.07.2006, a telegram was issued on 08.07.2006, followed by a notice dated 09.07.2006 terminating the agreement and forfeiting 25% of the advance amount and refunding a sum of Rs.75,00,000/- by way of two cheques for Rs.37,50,000/- each. With regard to the contention of the appellant that cheques

were handed over for the balance sale consideration, he would submit that the said statement is false and that there is no evidence on record to establish as to when and how the cheques were offered to the respondents 1 to 5. He would further submit that even in the notice dated 09.07.2006 and 13.07.2006 issued by the appellant, there is no reference as to the alleged cheques. The appellant failed to aver and prove its readiness and willingness. The learned Arbitrator did not take into consideration the implication of Clause 11 of the agreement which categorically stipulates that the agreement would not subsist if the balance consideration is not paid on or before 07.07.2006. He further submitted that as per Section 14 of the Specific Relief Act, a contract, which is in its nature determinable cannot specifically performed or enforced and that the agreement is determinable in nature,. He also pointed out that the appellant did not contend that Clause 11 is void. His further contention is that there was no evidence that the sale deed or power of attorney were produced or handed over to the respondents 1 to 5 but the learned Arbitral Tribunal proceeded on such erroneous assumptions and recorded perverse findings. Hence, the learned Single Judge rightly set aside the award granting specific relief and directed the appellant / Purchaser Company to initiate proceedings before appropriate forum for refund of advance money, warrants any interference by this Court.

8. Heard on both sides. Records perused.

9. This appeal is preferred under Section 37 of the A&C Act, 1996, challenging the order of the learned Single Judged passed under Section 34 of the A&C Act, 1996, whereby the Arbitral Award directing execution of a sale deed in favour of the appellant was set aside and the appellant was relegated to work out his remedy before the competent Civil forum. The appellant is the claimant before the Arbitral Tribunal, who initiated Arbitral proceedings for specific performance of contract based on a sale agreement dated 08.06.2006 . The appellant's contention is that, pursuant to an agreement entered into between the parties, the respondents had agreed to sell the suit property and, despite receipt of advance money to the tune of Rs.1 crore out of the total sale consideration of Rs.5 crores failed to execute the sale deed. Invoking the Arbitration Clause, the appellant sought specific performance of the Agreement. The learned Arbitrator allowed the claim and directed the respondents 1 to 5 to execute the sale deed.

9.1. The respondents 1 to 5 challenged the Award under Section 34 of the A&C Act, 1996, contending that the Award suffered from patent illegality. The learned Single Judge accepted the objections, set aside the Award and observed that the claimant is at liberty to institute appropriate proceedings before the competent forum for refund of advance money. Aggrieved thereby, the claimant has preferred the present appeal.

9.2. In this appeal, the following points for consideration arises.

(1) Whether Section 34 Court was justified in setting aside the Arbitral Award granting specific performance?

(2) Whether the direction relegating the claimant to approach the competent Civil Forum for refund of advance money calls for interference?

9.3. The scope of interference under Section 37 of the A&C Act, 1996, is limited. An appellate Court does not sit in appeal over the Arbitral Award but examines whether the Section 34 Court has exercised its jurisdiction in accordance with law. The Section 34 Court has recorded that the Award directing execution of the sale deed was rendered without proper adjudication of the foundational issues governing enforceability of the contract. The Arbitrator granted the principal relief of specific performance, observing that time is not essence of contract. The learned counsel for the appellant would contend that time is not essence of contract in immovable properties. No doubt, in matters relating to sale of immovable properties, where time is or time is not an essence of contract is an important issue so as to decide upon the question whether obligations undertaken by the parties under the contract are to be performed. The question whether time is an essence of contract is a mixed question of law and fact.

9.4. Section 55 of the Indian Contract Act, uses the phrase 'time is essence of contract' and provides that where parties agreed to perform a certain act on specified time and parties failed to perform the said contract at the said time, then the contract becomes voidable at the option of the promisee if it was intention of the parties to make time an essence of contract. The Section further provides that in case when parties to the contract do not intend to make the time an essence of contract, then the promisee is entitled to claim compensation for any loss occasioned to him as a result of such default. Section 46 of the Indian Contract Act further provides that where no time is specified in the contract for the performance of the contract, then it is to be performed within reasonable time period. The Hon'ble Supreme Court in ***Chandnee Widya Vati Madden vs. Dr. C.L. Katiai*** reported in ***1964 AIR (SC) 978*** after looking into the terms of agreement held that, time was not essence of the agreement. In the case of ***Chand Rani Vs. Kamal Rani*** reported in ***(1993) 1 SCC 519,*** the Hon'ble Supreme Court held that in case of sale of immovable property there is no presumption of law as to time being essence of the contract, however, even in case where time is not essence of contract, then also the Court may infer that it is to be performed in a reasonable time from the conditions of express terms of contract, from the nature of properties and from surrounding circumstance like object of making contract. The Court also held that, even when parties to contract have expressly provided time to be essence of contract then also such stipulation will have to be read along with other terms of contract as on proper construction of these terms may indicate towards excluding inference that the completion of work by particular date was meant to be fundamental. The Hon'ble Apex Court thus conclusively laid down that even where time is not essence of contract then also contract relating to immovable property is to be performed within a reasonable time that is to be determined from surrounding circumstances including express term of agreement and nature of property.

9.5. In ***A.K. Lakshmipathi and Ors vs. Rai Saheb Pannalal H Lahoti Charitable Trust and Ors*** reported in ***(2010) 1 SCC 287,*** the Hon'ble Supreme Court looked at the various clauses of the agreement and observed that parties intended to and were aware from beginning that time was essence of contract and the clauses clearly stipulated payment of the balance amount was the essence of the agreement and failure to make the said payment by the date stipulated on account of whatsoever reason shall result in forfeiture of the earnest money paid and shall further result in loss of any right held by the vendee in the scheduled property. The court further said that the intention of the parties to incorporate these clauses indicate towards the intention of parties to make time an essence of contract and thus held that parties always intended that time was to be of prime importance in contract and was essence of the contract. Thus the Court in this case relying upon the express terms of agreement relating to sale of immovable property held that time was essence of the agreement. Again the Hon'ble Supreme Court in ***Saradamani Kandappan Vs. S. Rajalakshmi and ors*** reported in ***(2011) 12 SCC 18*** wherein the Court tried to address the issue as to time being essence of contract. The agreement in that case provided that balance consideration was to be paid on some specified dates and in case of these being declared holiday, then it was to be paid on the next immediate working day. The agreement also provided that failure to make the payment on the specified date shall result in vendor cancelling the agreement. The agreement further provided that the sale deed shall be executed only at the convenience of the purchaser only after she is satisfied in regard to the title of the land and in case of her not being satisfied with the title then shall put the vendor notice of it and the vendor has to satisfy the purchaser in regard to title and in case the vendor fails, then vendor shall within three months from that date pay to the buyer all the money that was advanced to him. The Hon'ble Court after looking into express terms of the agreement held that parties to the agreement intended to make time as essence of contract in respect to the payment of balance consideration which was also manifested from the clauses of the agreement clearly indicating that payment was to be made on the stipulated dates and even a day delay was not acceptable unless the due date declared holiday as evident from the clause providing payment on immediate working day in case of date of payment being declared holiday.

9.6. The Hon'ble Apex Court further relying upon ***Chand Rani and K.S. Vidyanandamm case*** observed that the principle that time is not essence of contract for sale of immovable property does not apply in today's time because it is unsound or erroneous but because the circumstance that existed when the principle was evolved no longer exist today. The Court said it cannot ignore the reality of steep increase in prices and inflation which makes it inequitable to grant the relief of specific performance of contract when the purchaser does not take steps to complete the sale within the agreed period and the vendor is not responsible of any delay or non performance of contract. The Court said that the purchaser cannot take shelter of the principle that time is not the essence in the performance of contract relating to sale of immovable property to cover his own delay or laches or breaches or his non readiness and it would result in injustice if it is held that time was not intended to be the essence of contract by the vendor when the vendor took 10% of earnest money and agreed for period of 3-4 months as period of performance of contract in the circumstance of galloping increase of prices of immovable property. The Court also said that it would also be injustice to hold that time is  not essence of contract when suits and appeals for specific performance of contract take decades to attain finality and the vendor receives the balance consideration after decades when prices of immovable properties run in crores. Thus, the Court also said that principle that may hold good at one point of time may become with passage of time unreasonable and may make way to new principles and held that this principle of law should be revisited by the Court to arrive at new conclusions in view of changed circumstances arising from inflation and steep increase in prices. Thus, the Apex Court conclusively re interred principles of laws laid down in ***Chand Rani and K.S. Vidyanandam*** case and held that principles as to time not being essence of contracts relating to sale of immovable properties should be revisited in view of new circumstances, where time is a very important consideration which if not held essential shall result in detriment and prejudice to the vendor or buyer as the case may be. Hence, that principle that time is not essence of contract relating to sale of immovable property no longer holds good and even in cases where time is not essence of contract then also the contract is to be performed at a reasonable time that is to be determined by express terms of the agreement, nature of property and surrounding circumstances.

9.7. In the present case, Clause 3 of the agreement specifies the time limit of 30 days from the date of the agreement, which expired on 07.07.2006. A telegram was also issued on 08.072006 in this regard. Though the appellant would contend that cheques were handed over for the balance sale consideration, the same is not established by them. In fact, even in the notices dated 09.07.2006 and 13.07.2006 nothing is mentioned about the alleged cheques. Further, Clause 11 of the agreement stipulates that the agreement would not subsist if the balance sale consideration is not paid on or before 07.07.2006. As per Section 14 of the Specific Relief Act, a contract, which is in its nature determinable, cannot be specifically performed or enforced and that the agreement is determinable in nature. As rightly pointed out by the learned counsel for the respondents 1 to 5, the appellant never contended that Clause 11 is void. While so, the learned Arbitral Tribunal erroneously held that 30 days limit is only for the payment of balance sale consideration and not for registration of the sale deed, in the absence of any proof that the appellant attempted to hand over the cheques dated 07.07.2006 to the respondents 1 to 5 . Therefore, by virtue of Clause 3 and Clause 11 of the agreement, it is evident that, time is of the essence of the contract. It means that the parties intended to make time essence of contract under the said clauses of the suit agreement. Further, there is no doubt, the balance sale consideration was not received by the respondents 1 to 5 on or before 07.07.2006. Clause 11 of the agreement stipulates that if there is default for any reason whatsoever, the respondents 1 to 5 have the right to terminate the agreement.

9.8. The learned Single Judge appreciating the above facts and circumstances of the case in a right prospective held that the award suffers from patent illegality apparent on the face of the Award and is liable to be set aside. The relevant paragraph of the impugned order is extract as hereunder:

*...Clause 11 of the Agreement should be read with Clause 3 thereof, which provides that payment of the balance sale consideration should be made "on or before the date of registration of the Sale Deed or within 30 days from the date of this Agreement whichever is earlier." When the above extract from the Award is examined in light of Clauses 3 and 11, it is evident that the conclusion, in bold, that the parties intended to put an end to the transaction if not concluded by 7th July 2006 leaving only the issue of refund of advance and the conclusion in the last sentence, in italics, that completion of registration could be done later are contradictory, incompatible and patently erroneous in as much as, as per Clauses 3 and 11, 30 days is the outer limit both for payment of the balance sale consideration and for registration of the sale deed. Besides, once the transaction ends, there can be no registration. Needless to say, the Vendors could have waived the condition but that was admittedly not the position in this case. Moreover, the Vendors issued a telegram dated 08.07.2006 and a lawyer's notice dated 09.07.2006, whereby the termination of the Agreement was communicated. In these facts and circumstances, the Purchasers filed the statement of claim requesting for specific performance and by the impugned Award, the Arbitral Tribunal awarded specific performance. In light of the above*

*analysis of Clauses 3 and 11 of the Agreement, the claim made in the Arbitration was liable to be rejected unless there was proof of payment on or before 07.07.2006, which is evidently not the case. Nevertheless, the learned Arbitrator framed an issue as to whether the contract was lawfully terminated and entered a finding that it was unlawfully terminated and that, therefore, it should be treated as subsisting. This finding is patently erroneous and directly contrary to Clauses 3 and 11 of the Agreement and makes out a case for interference as per the law laid down in paragraph 15 of ONGC v. Saw Pipes Ltd. (2003) 5 SCC 705, which was followed subsequently in several judgments.*

…….

*19.All the judgments that were relied upon by Mr.R.Thiagarajan to the effect that time is not of the essence of a contract in respect of immovable property also provide that this is only a rebuttable presumption and that it is subject to a contract to the contrary. In this case, clause 11 is unequivocal that time is of the essence and the said clause also provides for forthwith determination as the consequence of not performing within time. The judgment in the Sikandar case is relevant but nothing turns on it because the termination, in this case, was as per the terms thereof. The judgment in the Kanthamani case* *with regard to the non-necessity of producing the money to prove readiness and willingness is distinguishable in the context of Clauses 3 and 11, whereby the payment of the balance sale consideration and the conclusion of the transaction on or before 07.07.2006 is of the essence of the Agreement.*

Hence, the learned Single Judge rightly held that the Award of the learned Arbitral Tribunal granting specific relief is erroneous, warrants interference.

9.9. Further, the observation of the Section 34 Court permitting the claimant to approach the competent Civil Forum for refund of advance money does not amount to adjudication of claimant's right. It merely preserves the claimant's liberty to seek appropriate relief before a forum competent to decide the disputed issues after recording evidence. Such liberty causes no prejudice to either party.

9.10. This Court finds no perversity or jurisdictional error in the order under Section 34 warranting interference under Section 37. The findings are based on settled principles governing judicial review of Arbitral Awards and do not call for appellate interference.

10. In the result,

i. both the Original Side Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

ii. The order dated 26.11.2019 of the learned Single Judge passed in O.P.Nos.698 and 711 of 2012 setting aside the Arbitral Award is confirmed.

iii. The liberty granted to the appellant to institute appropriate proceedings before the competent Civil Court or other forum, if so advised, is affirmed. Any such proceedings shall be decided independently on their own merits, uninfluenced by any observations made in the Arbitral Award or in the order under Section 34 except to the extent necessary for deciding questions of limitations and maintainability.

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

**17-07-2026**

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

BGA

To
The Sub Asst. Registrar,
Original Side,
High Court, Madras.

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

**BGA**

Pre delivery common judgment in
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**17-07-2026**