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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-08-2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

and

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 269 of 2020

and

CMP Nos. 15744 of 2025 and 12340 of 2022

1. The Superintending Engineer (Highways)
Madurai Circle, Madurai.
2. The Superintending Engineer
(National Highways)
Madurai Circle, Madurai.
3. The Superintending Engineer
(National Highways)
Salem Circle, Salem.

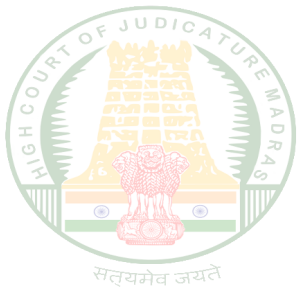
..Appellants

Vs

1. S.Jayamani
S/o. M.Subbiah Devar, Engineering Contractor,
No.6/107, Lakshmipuram, Palani 624601.
2. Justice K.Sampath Kumaran
Sole Arbitrator, Ncb No.1, Pskr Salai,
Greenways Road, Ch-28.(appointed As Per
Order Dt 08.12.2006 Of The Honble High
Court In Op No.672/2005)

..Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent praying to set aside the Judgment and decree dated 04.10.2019 made in OP No.293 of 2011 on the file of the Original Side of this Court.



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For Appellants:

Mr. Karthik Selvaraj,
Additional Government Pleader

For Respondent(s):

Mr.K.J.Parthasarathy for R1
R2 -dismissed as against the second respondent
vide Court order dated 01.07.2026

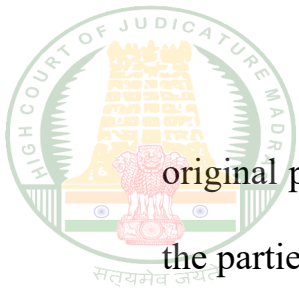
Judgment

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

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short A&C Act, 1996) is directed against the order dated 04.10.2019 of the Single Judge under Section 34 of the A&C Act in O.P. No. 293 of 2011 refusing to set aside the Arbitral Award.

2. Facts:

2.1. The appellants and the 1st respondent entered into an agreement dated 01.09.1988 for the improvement works of the Ghat Road in Thandiankudisai Adalur Road – Pachalur Road Stretch for a value of Rs.65,00,000/- and duration of two years. According to the appellants the project could not be completed within the original contract period, and came to be completed only in the year 1995 after a delay of over five years and the final bill was received by the 1st respondent under protest on 27.03.1999. Since the completed work during the



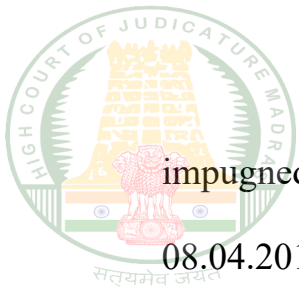
original period of contract was only about 30%, several disputes arose between the parties.

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2.2. In view of the disputes, on 21.04.1999, the 1st respondent raised certain claims as against the appellants and requested for the disputes to be referred to arbitration. Thereafter, the 1st respondent sent yet another letter dated 11.01.2002 raising various claims for the first time under several heads against the appellants. Since no Arbitral Tribunal was constituted, the 1st respondent had approached this Court by way of an application under Section 11 of the A&C Act, 1996, in O.P. NO.672 of 2005 on 24.03.2005, in which a sole Arbitrator was appointed by order dated 08.12.2006.

2.3. The learned sole Arbitrator passed a preliminary award dated 03.06.2010 holding that the 1st respondent is entitled to an aggregate sum of Rs.51,90,602/- with interest thereon and by a final award dated 08.04.2011, the learned Arbitrator directed the appellants herein to pay a sum of Rs.1,12,63,051.02 with interest on the principal sum of Rs.51,90,602/- at 18% per annum from 22.11.2010 till the date of payment, Arbitrator's fees, Lawyer's fees, expenses, etc.

2.4. Aggrieved by the Awards, the appellants filed an Original Petition in O.P. No.293/2011 on the file of the Original Side of this Court challenging the

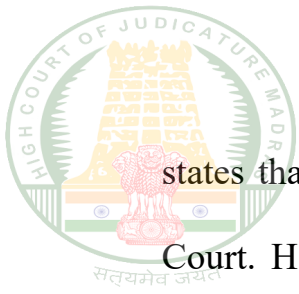


impugned preliminary award dated 03.06.2010 and the final award dated 08.04.2011 passed by the sole arbitrator on the grounds of limitation and jurisdiction.

2.5. The learned Single Judge, vide judgment dated 04.10.2019, dismissed the said petition filed under Section 34 of the A&C Act, 1996, thereby, confirming the award of the arbitrator.

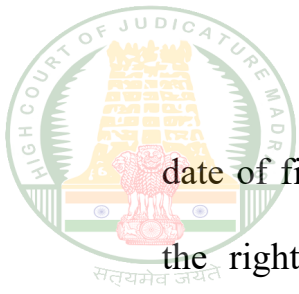
2.6. Aggrieved by the same, the appellants have preferred the present Original Side Appeal.

3. Mr. Karthik Selvaraj, learned Additional Government Pleader appearing for the appellants would contend that the learned Single Judge ought to have set aside the award passed by the learned Arbitrator since the claims made by the 1st respondent is not maintainable in view of express bar of jurisdiction of the Arbitrator, under Clause 12 of the Agreement which states that the Arbitrator shall not entertain any claim over and above Rs.2,00,000/- and that the remedy would lie only before a Civil Court. Further it is submitted that, by virtue of Clause 108.02 of Preliminary Specifications to Standard Specifications of roads and bridges (P.S. to S.S.R.B), the Government Order in G.O. Ms. No.1545 dated 26.07.1990 stipulating a pecuniary limit for arbitration is binding upon the parties and that G.O.Ms. No.1545 dated 26.07.1990 clearly



states that the claims above the value of Rs.2,00,000/- shall be referred to the Court. Hence, he would submit that the Award passed by the Arbitrator is a nullity in view of the inherent lack of jurisdiction to try the claims above Rs.2,00,000/- by the Arbitral Tribunal. He would further contend that, while appointing an Arbitrator, this Court, vide order dated 08.12.2006 made in O.P. No.672/2005, merely recorded the contentions of both the parties and appointed the sole arbitrator. However, this Court did not record any observations regarding the plea of limitation or jurisdiction, while appointing the sole Arbitrator. While so, the learned Single Judge erred in confirming the award passed by the arbitrator, who rejected the plea of limitation and jurisdiction on the basis that this Court had considered the contentions of the appellants that the claim is barred by limitation, when, in fact, this Court had not recorded any decision on the plea of limitation. The learned Single Judge erred in concluding that, when the question of jurisdiction and limitation not being raised at the stage of Section 11 petition before this Court in O.P. No.672/2005, the appellants are estopped from raising the question of jurisdiction before the Arbitral Tribunal and subsequently in the 34 Court. In fact, the claims of the 1st respondent are clearly barred by law of limitation, as prescribed by the contractual provision and by the Limitation Act, 1963.

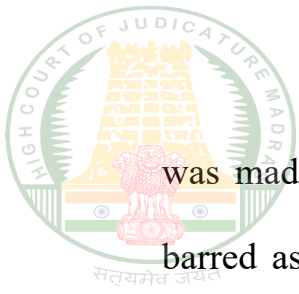
3.1. He would further submit that, clause 111 of P.S. to S.S.R.B specifically stipulates that the claim shall be preferred within one year from the



date of final payment. Further Clause 111 of PS to SSRB merely extinguishes the right of the 1st respondent to refer the dispute to arbitration without curtailing any limitation period prescribed by the statute. It is submitted that the date of final payment was on 27.03.1999 and the petition under Section 11 of the Act was filed by the 1st respondent in O.P. No.672/2005 only on 24.03.2005, which is beyond the limitation period. Therefore, the impugned order dismissing the Original Petition No.293/2011 confirming the Arbitral Award is liable to be set aside.

4. On the other hand, Mr.K.J. Parthasarathy, the learned counsel for the first respondent submitted that the Section 11 petition was filed on 22.03.2002 and not on 24.03.2005 and the same is found in the docket of the said petition. He would further submit that the docket bears the endorsement that the delay in representation was condoned on 14.02.2005 in Application No.2808 of 2005 and the petition under Section 11 was numbered in the year 2005 after delay in representation was condoned. Therefore, Section 11 petition was filed within three years from the date of payment of the final bill and also within three years from the date of commencement of arbitration.

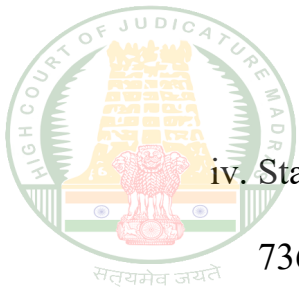
4.1. He would further submit that the final payment was made on 27.03.1999 and the Arbitration Clause was invoked on 21.04.1999 within a period of one month from the date of payment of the final bill. Hence, the claim



was made within one year from the date of final payment and therefore, not barred as per PS 111. He would further submit that, on a demurrer, a clause curtailing the period of limitation violates Section 28 of the Contract Act and is, consequently, void.

4.2. With regard to the pecuniary limit of Rs.2,00,000/-, the learned counsel would submit that G.O. Ms. No.1545 is not mentioned or specified in the P.S. to SSRB and, therefore, the said Government Order cannot be said to be incorporated by reference in the contract between the appellants and the 1st respondent and is, consequently, not binding. Further he would submit that the Arbitrator has interpreted the contract after considering the rival contentions and material documents. Such interpretation, even if another interpretation is possible cannot be interfered with either under Section 34 or Section 37 of the A&C Act, 1996. It is further submitted that the findings regarding jurisdiction and limitation are based on the materials available before the learned Arbitrator. In support of his contentions, he has relied upon the following judgments:

- i. M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited reported in (2009) 7 SCC 6969
- ii. Union of India vs. Pam Development Private Limited reported in (2014) 11 SCC 366.
- iii. MSP Infrastructure Limited vs. Madhya Pradesh Road Development Corporation Limited reported in (2015) 13 SCC 713.



iv. State of West Bengal vs. Sarkar and Sarkar reported in (2018) 12 SCC 736.

v. Punjab State Civil Supplies Corporation Limited and Another vs. Sanman Rice Mills and others reported in 2024 SCC OnLine SC 2632.

vi. Vidyawati Construction Company vs. Union of India reported in (2025) 5 SCC 347.

vii. Sanjit Singh Salwan and others vs. Sardar Inderjit Singh Salwan and others reported in 2025 SCC OnLine SC 1697.

Hence, he prayed for dismissal of the present appeal.

5. Heard on both sides. Records perused.

6. The following point arises for consideration:

“Whether the learned Single Judge was justified in refusing to interfere with the Arbitral Award under Section 34 of the A&C Act, 1996?”

7. Before delving into the impugned order passed by the learned Single Judge, the scope of interference under Sections 34 and 37 of the A&C Act, 1996, has to be seen. The jurisdiction exercised by the Court under Section 34 of the A&C Act, 1996, is supervisory and not appellate. The Court does not sit as a Court of Appeal over the conclusions of the Arbitral Tribunal. The jurisdiction under section 37 is narrower still, since the appellate court examines



whether the learned Single Judge has exercised the jurisdiction vested in him under Section 34 in accordance with law.

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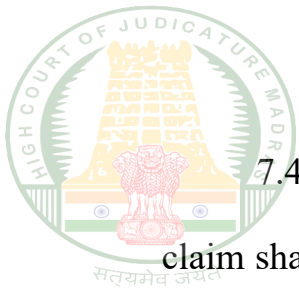
7.1. The Hon'ble Supreme Court has repeatedly held that where the Arbitrator adopts a view which is a possible and reasonable interpretation of a contract, the Court cannot substitute its own interpretation merely because another interpretation is also possible. The recent decisions reiterate that patent illegality is attracted only where the award is perverse, where no fair minded or reasonable person could have adopted the interpretation, where the finding is based on no evidence or where vital evidence has been ignored. A mere erroneous interpretation or appreciation of evidence just justify interference.

7.2. The learned counsel for the appellants submitted that, the Award was primarily challenged before the 34 Court on the ground of limitation and jurisdiction, which was not considered by the learned Single Judge in the right perspective. With regard to limitation, the specific contention of the learned counsel for the appellants is that the arbitration proceedings were commenced on or about 21.04.1999, when the 1st respondent invoked the arbitration clause. After invoking the arbitration clause on 21.04.1999, the 1st respondent filed a petition under Section 11 of the A&C Act, 1996, only on 24.03.2005, whereas, as per Article 137 of the Limitation Act, 1963, the limitation period for filing an application under Section 11 of the Act, is three years from the date when the



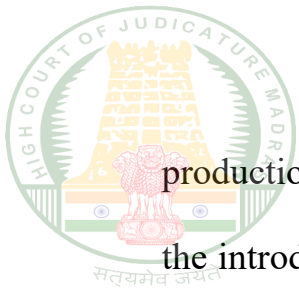
cause of action accrues. Accordingly, if calculated from the date of final bill, namely, 27.03.1999, Section 11 petition should have been filed on or before 27.03.2002 and, if calculated from the date of commencement of arbitration proceedings, i.e. on 21.04.1999, the said petition should have been filed on or before 21.04.2002, but the same has been filed only on 24.03.2005, which is clearly barred by limitation. He would further submit that the question of limitation was not decided in the order passed in Section 11 petition, wherein the Court merely recorded that this is a fit case for making a reference under Section 11(5) of the Act, and therefore, the question of limitation should have been decided by the Arbitral Tribunal. But, the Arbitral Tribunal rejected the plea of limitation on the basis that this Court had considered the question of limitation but nevertheless appointed the arbitrator and thereby impliedly held that the claim is not barred by limitation, which is patently illegal.

7.3. In response to the question of limitation, the learned Single Judge, based on the evidence on record, rightly held that Section 11 petition was filed on 22.03.2002 and the delay in representation on 14.07.2005 and that Section 11 petition was filed within the limitation period of three years. Consequently rejected the plea of the appellant that the Arbitral proceedings are barred by limitation.



7.4. The next contention of the appellants is that PS 111 specifies that the claim shall be preferred within one year from the date of final payment and that payment preferred after the limitation period shall be time barred. Admittedly, the final payment was made on 27.03.1999 and the Arbitration Clause was invoked on 21.04.1999. The learned Single Judge rightly held that as per Section 21 of the A&C Act, 1996, the date of receipt of the letter invoking the Arbitration clause is the date of commencement of arbitration. The Arbitral Tribunal had also considered the above facts and the connected documents before concluding that the claim was submitted within one year from the date of final payment on 27.03.1999, and the said finding of the learned Arbitrator was rightly confirmed by the learned Single Judge. Further, such a clause limiting the period of limitation prescribed by the Limitation Act, violates Section 28 of the Contract Act, and is, therefore, void (**Ref: National Insurance Company Limited vs. Sujir Ganesh Nayak & Co., and another, (1997) 4 SCC 366**).

7.5. The next contention of the learned counsel for the appellants is that the Arbitral Tribunal does not have pecuniary jurisdiction as per G.O.Ms. No.1545 which is incorporated by reference in the contract between the appellants and the 1st respondent. As pointed out by the learned Single Judge the said contention was not raised in the Section 11 Petition or before the Arbitral Tribunal and more importantly, the said Government Order was not filed as an exhibit. Therefore, the learned Single Judge rightly held that, the



production of the said Government Order in Section 34 petition is tantamount to the introduction of additional evidence, which is impermissible. Further, Clause 48 of the tender conditions which is part of the contract, is significant for the purpose of deciding the jurisdictional issue. The learned Single Judge has elaborately dealt with the said issue and would be appropriate to extract the relevant portion of the impugned order.

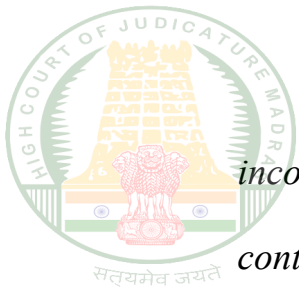
“17.Nonetheless, elaborate arguments were addressed on whether G.O. Ms.1545 is incorporated by reference and, therefore, this issue is considered. For this purpose, Clause 48 of the tender conditions should first be examined. The said tender conditions are a part of the contract and may be referred to as Document A for the purposes of deciding this issue. On examining Clause 48 of the tender conditions, it is evident that the intention to incorporate the PS to SSRB in Document A is manifest and unambiguous. The said PS to SSRB may be referred to as Document B for the purposes of deciding this issue and it may be concluded that Document B is incorporated by reference in Document A. However, it remains to be seen whether, by virtue of Clause 108.02 of the said P.S. to SSRB, G.O. Ms.No.1545 stands incorporated by reference. The said G.O. Ms. No.1545 may be referred to as Document C for the purposes of deciding this issue. On examining Clause 108.02 closely, it is evident that there is no reference therein to Document C. Instead, it



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is clear that this is a clause that makes it obligatory on the Petitioner/Contractor to comply with Central and State laws and regulations. With reference to orders, this clause stipulates that the First Respondent/contractor should comply with “all such orders that may be enacted by legislative bodies or tribunals with jurisdiction over the work”. In other words, it is a clause that makes it obligatory on the First Respondent/Contractor to comply with applicable laws. There is no reference therein to executive orders and, undoubtedly, no reference to Document C, namely, G.O. Ms. No.1545. In addition, there is no indication elsewhere in the PS to SSRB or in the tender conditions that the parties intend to incorporate by reference orders such as G.O. Ms. No.1545. Indeed, Clause 108.02 of Document B does not even refer generically to government orders. Instead, it refers generically to laws, regulations and orders.

18.This issue can also be examined from a rational or common sense perspective. When one concludes that a document is incorporated by reference, in effect, the incorporated document is made applicable and binding on parties who/which have not signed or subscribed to such document. In this case, the parties signed a contract, namely, Document A. Document A refers to the PS to SSRB, namely, Document B, expressly and the intention to



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incorporate the said PS to SSRB is manifest in Document A. The contention of the learned counsel for the Petitioners is that this Document B incorporates by reference G.O. Ms. No.1545, namely, Document C and that, therefore, this Document C is also binding on the signatories to Document A. Needless to say, this does not stand to reason unless the intention to incorporate Document C in Document A is clear and unambiguous because otherwise a non-signatory is compelled to comply with the terms and conditions of a document, which could be alien to such person. In this case, as stated earlier, Document C, namely, G.O. Ms. No.1545, is not specified in Document B. Moreover, Clause 108.02, which is said to be the incorporating clause in Document B does not even deal with executive orders. Instead, it deals with laws, regulations and legislative orders and imposes obligations on one party, namely, the Respondent/contractor and not on the Petitioners.”

By holding so, the learned Single Judge rejected the plea of jurisdiction raised by the appellants.

7.6. The learned Single Judge has considered the grounds raised by the appellants and declined to interfere with the award. We find no error in the approach adopted by the learned Single Judge warranting interference under Section 37 of the A&C Act, 1996. The appellants have essentially invited this



Court to undertake a re appreciation of the factual findings of the learned Arbitrator and to substitute another view for that of the learned Arbitrator. Such an exercise is outside the limited jurisdiction under Sections 34 and 37 of the Act.

8. For the foregoing reasons, we hold that, there is no ground for interference under Section 37 of the Act has been established by the appellants.

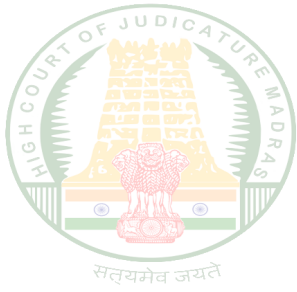
9. In the result, the appeal is dismissed. The order dated 04.10.2019 passed in O.P No.293 of 2011 by the learned Single Judge dismissing the petition under Section 34 of the A&C Act, 1996, is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(P.V.,J.) (K.G.T.,J.)
07-08-2026

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

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



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Case Citation: (2026) ibclaw.in 4805 HC

OSA No. 269 of 2



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

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