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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

In the High Court of Judicature at Madras

Reserved on 03.2.2026	Delivered on: 13.2.2026
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.49 of f 2021
& O.P.No.442 of 2021
& A.No.2474 of 2021

M/s KRK Education Trust
Rep. by its Managing Trustee
Mr.K.R.Ilanghovan, New No.40/1,
Old No.23, A.B.M.Avenue
R.A.Puram, Chennai-28.

...Petitioner in
Arb.O.P.No.49 of 2021
& Respondent in
O.P.No.442 of 2021

Vs

M/s.Aintiram Developers (P)
Ltd., BG-3, Gokul Apartments,
New No.250, R.K.Mutt Road,
R.A.Puram, Chennai-28.

...Respondent in
Arb.O.P.No.49 of 2021

M/s.Aintiram Developers (P)
Ltd., No.19, Venkatraman
Street, R.A.Puram, Chennai-28.

...Petitioner in O.P.No.
442 of 2021



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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PETITIONS under Section 34 of the Arbitration and Conciliation

Act, 1996 praying

(i) to set aside the award dated 06.2.2020 made by the learned Arbitrators to the extent the claim has been granted in favour of the respondent on the grounds mentioned above (Arb.O.P. (Com.Div.) No. 49 of 2021); and

(ii) to set aside the award dated 06.2.2020 of the Arbitral Tribunal (O.P.No.442 of 2021).

For Petitioner in
Arb.O.P.No.49 of 2021 &
Respondent in
O.P.No.442 of 2021 : Ms.Tanya Kapoor

For Respondent in
Arb.O.P.No.49 of 2021 &
Petitioner in
O.P.No.442 of 2021 : Mr.R.Karthikeyan

COMMON ORDER

Both the claimant and the respondent before the Arbitral Tribunal have filed the above petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) challenging the award passed by the Arbitral Tribunal dated 06.2.2020.



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

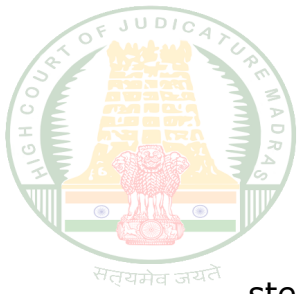
2. Heard both.

3. For the sake of convenience, the parties will be assigned the same rank as was assigned before the Arbitral Tribunal.

4. The facts leading to filing of these petitions are as follows:

(i) The claimant is a public charitable trust to promote and run educational institutions in all faculties. They approached the respondent with a request to undertake construction works of a college and the scope of work was for construction of a building and interior contract. The respondent also introduced two other potential contractors to complete the work.

(ii) A work order was issued to the respondent by the claimant on 18.3.2010. Further, an agreement was entered into between the parties on 22.3.2010. The respondent was awarded the contracts for execution of the works such as Block A, Block B – second floor, Workshop – ground, first and second Floors and Hostel – second and third floors. The project was to be executed between March 2010 and December 2011 and the claimant had to supply all materials like



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

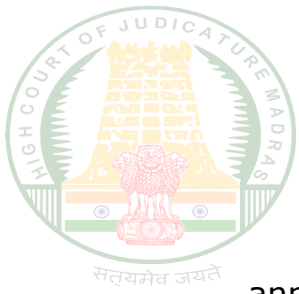
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steel, cement, etc. The respondent was paid a sum of Rs.842.42 lakhs, which was inclusive of the materials supplied amounting to 107.78% of the total contract value.

(iii) When the final bill namely bill No.8 was raised and submitted by the respondent, the same was approved by the Architect. However, vide letter dated 25.12.2012, the claimant disputed the said approval given by the Architect and pointed out the mistakes. Further, the Architect, vide letter dated 01.2.2013, rectified the mistakes and revised the certified bill.

(iv) The dispute arose between the parties, which resulted in making 8 claims by the claimant. The respondent raised the bills for a sum of Rs.969.31 lakhs. The Architect certified the bills for Rs.833.40 lakhs. The claimant paid a sum of Rs.842.42 lakhs. Hence, the claimant took a stand that excess payment was made to the respondent and that the respondent was liable to refund Rs.60.85 lakhs, which was paid in excess by the claimant.

(v) Before the Arbitral Tribunal, the claimant prayed for an award against the respondent for a sum of Rs.60.85 lakhs towards the amount paid in excess along with interest at the rate of 8% per



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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annum. In turn, the respondent filed a statement of defence and made counter claims. According to the respondent, the contract was limited to civil works to be carried out in terms of the drawings of the Architect.

(vi) In the statement of defence, the respondent also took a stand that there was no understanding of steel calculation of 5 Kgs per sq.ft., between the parties, that, apart from that, the respondent undertook additional works on the request made by the claimant vide letters dated 08.8.2011 and 19.12.2011 and that the construction of second floor of Blocks A and B was agreed at the revised rate of Rs.750/- per sq.ft., while the construction of the hostel and the workshop was agreed at the price quoted by the claimant.

(vii) The respondent also took a stand that the constructed buildings were handed over (a) during July 2010 – Block A - ground and first floors; (b) during May 2011 – Blocks A & B – II Floor; and (c) during July 2011 – workshop - ground and first floors. Totally, 13 bills were raised by the respondent for the main building and the workshop, 3 bills for the hostel block and 2 bills for the work shop



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

second floor. Further, 11 bills were certified by the Architect on 03.2.2012. However, the final bills for the hostel and the second floor of the workshop raised on 14.8.2012 were not approved. After having certified the bills, the Architect unanimously revised the bills without notice to the respondent and thereby the amounts due and payable to the respondent were drastically cut down. Therefore, the respondent also raised 11 counter claims along with interest.

(viii) Considering the pleadings, the Arbitral Tribunal framed the following issues:

- "1. What were the terms of the contract between the parties?*
- 2. By whom was the breach committed?*
- 3. Whether the deductions made by the Architect in the certified final bill dated 01.2.2013 is correct?*
- 4. Whether the respondent is liable to pay a sum of Rs 60.85 lakhs to the claimant?*
- 5. Whether the respondent is entitled to counter claim as prayed for?*
- 6. Whether the parties are entitled to interest as claimed by them?*
- 7. Whether the parties are entitled to costs of the proceedings? and*



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

8. *To what relief the parties are entitled to?"*

(ix) The claimant examined C.W.1 and marked Ex.C.1 to Ex.C.43. The respondent examined R.W.1 and marked Ex.R1 to Ex.R.28.

(x) The Arbitral Tribunal, on considering the facts and circumstances of the cases and on appreciation of evidence, passed an award on 06.2.2020 in the following terms:

"a. the claimant shall pay the respondent a sum of Rs.34,69,347/- and in addition the retention money shall be refunded to the respondent as set out in paragraph 47 above;

b. the interest payable by the claimant on the sum set out in (a) above shall be at the rate of 12% p.a. on the sum of Rs.16,84,348/- adjudged to be payable to the respondent by the claimant in respect of the main building from 03.2.2012 till date of realisation and at 12% p.a. on the sum of Rs.17,84,999/- adjudged to be payable to the respondent by the claimant in respect of the workshop and hostel from 14.8.2012 till date of realisation; and

c. the claimant shall reimburse the respondent the sums paid by the respondent as



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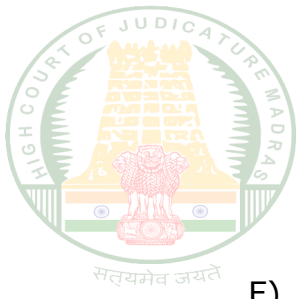
Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

fees to the Arbitrators and the venue charges for the sittings of the Arbitral Tribunal.”

(xi) Aggrieved by the directions that were issued to the claimant to pay to the respondent a sum of Rs.34,69,347/- and in addition, to refund the retention money and to pay interest, the claimant filed Arb.O.P.(Com.Div.) No.49 of 2021. Aggrieved by the rejection of the counter claims, the respondent filed O.P.No.442 of 2021.

5. The learned counsel for the claimant submitted as follows:

(a) The Arbitral Tribunal went wrong in rejecting the claim for steel price deduction (disputes A & H) and allowing counter claim No.1, rejecting the claim towards defect in construction (dispute B) and directing the claimant to refund a sum of Rs.5 lakhs each (counter claim Nos.5 and 6), rejecting the claim pertaining to wrongful bill raised for parapet wall works (dispute C) and allowing counter claim No.2, rejecting the claim pertaining to deduction of money from the final bill for using aluminium windows instead of UPVC (dispute D), rejecting the claim for price reduction for areas under corridor, staircase, etc., whose construction cost less (dispute



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

WEB COPY

F), allowing counter claim No.4 towards weathering course and counter claim No.11 towards withheld payment for cupboard works for boys hostel, that the findings of the Arbitral Tribunal were in violation of the terms of the contract and that the award passed by the Arbitral Tribunal to that extent is against Section 20(3) of the Act and suffers from perversity and patent illegality warranting the interference of this Court.

(b) The award is severable and the valid portion can be severed from the invalid portion in line with the judgment of the Hon'ble Apex Court in ***Gayatri Balasamy Vs. ISG Novasoft Technologies Ltd. [reported in 2025 SCC OnLine SC 986]***.

6. Per contra, the learned counsel for the respondent submitted as follows:

(a) The Arbitral Tribunal, after taking into consideration Ex.R.6, Ex.R.7, Ex.C.42 and Ex.C.43, ought to have passed the award for the balance payments to the tune of Rs.90,12,961/-. Apart from that, the Arbitral Tribunal, having accepted the amounts



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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for steel price deductions, ought to have directed the payment of balance items also to the tune of Rs.15,19,907/-.

(b) The learned counsel for the respondent also questioned the award of the Arbitral Tribunal in not awarding payment for the hostel and the workshop with regard to steel consumption to the tune of Rs.74,93,054/-. Thus, the claimant is liable to make all the payments and the award passed by the Arbitral Tribunal rejecting the counter claims to the tune of Rs.3,04,11,401/- is certainly vitiated by perversity and patent illegality.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

8. In order to have a bird's eye view of the claims and the counter claims made by the parties on either side and as to what was awarded by the Arbitral Tribunal, they are tabulated as hereunder:



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

<i>Dispute</i>	<i>Claims/Disputes relating to</i>	<i>Amount claimed</i>	<i>Award</i>
<i>Disputes A & H</i>	<i>Difference in Steel Consumption</i>	<i>Rs.95,26,011/- & Rs.32,30,000/- respectively</i>	<i>Rejected</i>
<i>Dispute B</i>	<i>Rectification Work</i>	<i>Rs.2,23,750/-</i>	<i>Rejected</i>
<i>Dispute C</i>	<i>Wrongful bill raised for parapet wall works</i>	<i>Rs.9,41,300/-</i>	<i>Rejected</i>
<i>Dispute D</i>	<i>UPVC Windows (more expensive) not provided as per agreement</i>	<i>Rs.2,23,080/-</i>	<i>Rejected</i>
<i>Dispute E</i>	<i>M Book not furnished</i>	<i>-</i>	<i>-</i>
<i>Dispute F</i>	<i>Price reduction for areas under corridor, staircase, headroom, etc., whose construction cost less</i>	<i>Rs.43,94,640/-</i>	<i>Rejected</i>
<i>Dispute G</i>	<i>Shuttering materials hire charges paid by the claimant</i>	<i>Rs.2,35,448.45 Ps.</i>	<i>Allowed</i>
	<i>Total (A)</i>	<i>Rs.187.74 lakhs</i>	
	<i>Total Value of bills of the respondent (B)</i>	<i>Rs.969.31 lakhs</i>	
	<i>Amount to be paid to the respondent [B - A] = [C]</i>	<i>Rs.781.57 lakhs</i>	
	<i>Amount paid to the respondent (D)</i>	<i>Rs.842.42 lakhs</i>	
	<i>Amount claimed (D - C)</i>	<i>Rs.60.85 lakhs</i>	
	<i>Counter Claims relating to</i>		
<i>CC No.1 (Disputes A & H of the</i>	<i>Deduction of steel</i>	<i>Rs.94,33,585/-</i>	<i>Allowed</i>

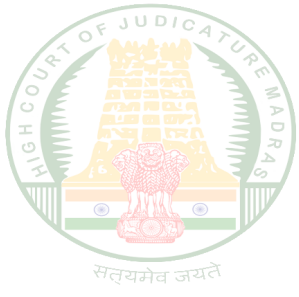


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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

<i>claim)</i>			
CC No.2 (Dispute C of the claim)	Parapet wall	Rs.9,41,300/-	Allowed
CC.No.3	Workshop Headroom deduction	Rs.32,400/-	Rejected
CC No.4	Weathering course labour deduction fund	Rs.1,00,000/-	Allowed
CC No.5 (Dispute B of the claim)	Deduction from boys hostel bill (i) for outer painting (ii) finishing with grill works at cloth drying area	Rs.3,32,680/-	Rs.5,00,000/- to be returned to the respondent
CC No.6 (Dispute B of the claim)	Deduction for rectification and screed concreting Painting outer wall deduction refund	Rs.8,67,200/-	Rs.5,00,000/- to be returned to the respondent (common finding for dispute B & CC Nos.5 and 6
CC No.7	Difference in quantity of brick work altered from 115 mm to 230 mm for inner wall works	Rs.21,20,680/-	Rejected
CC No.8	Difference in inner painting work (plastic emulsion done instead of OBD)	Rs.4,40,196.42 Ps	Rejected
CC No.9	Excess price for materials supplied	Rs.28,56,500/-	Rejected
CC No.10	Losses for stoppage of work	Rs.4,00,000/-	Rejected
CC No.11	Withheld payment for cupboard works for boys hostel Interest @ 18% p.a.	Rs.5,00,540/-	Allowed Allowed



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

9. The case of the claimant is as follows:

The certification of the final bill by the Architect by communication dated 03.2.2012 (Ex.R.3) has not taken into account various issues as set out in the claimant's communication dated 25.12.2012. There were errors, which were corrected by the Architect by refusing the certification done by communication dated 01.2.2013 (Ex.C.35). The claimant had made payments to the tune of Rs.842.42 lakhs as against the total value of bills of Rs.969.31 lakhs claimed by the respondent. Most of the claims were primarily the payments made pursuant to the original certification, which were subsequently disallowed in the revised certification. Apart from the differences in the steel reconciliation cost, the claimant also raised other issues including the defects in construction and rectification, inclusion of the parapet wall area in the final bill, use of aluminium doors instead of UPVC, reduction in cost for the areas under corridor, staircase and headroom portion, hire charges for shuttering materials and reduction in the base price of the fixed cost of Rs.750/- per sq.ft., for the second floor of all the buildings.



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

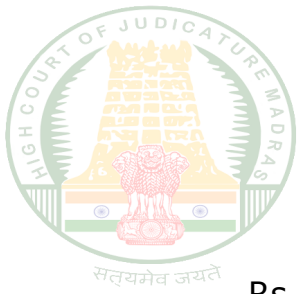
10. Per contra, the case of the respondent is as follows:

The certification of the final bill under Ex.R.3 was done in terms of the contract and there was no power to review the said certification as was done under Ex.C.35. This is more so since the claimant did not raise any objection to the final bill. What was paid by the claimant was Rs.842.42 lakhs. Apart from that, the respondent made counter claims with respect to certain payments not raised earlier and those, which were disallowed consequent to revision in the certification of the final bill.

11. Having understood the scope of the dispute between the parties, this Court can directly go into each of the claims and the counter claims and the findings rendered by the Arbitral Tribunal in that regard and see if they require interference of this Court.

Disputes A & H and Counter Claim No.1:

12. This issue pertains to steel price deduction. Ex.C.2 agreement provided that the cost of construction of the ground floor and the first floor of the main building (Blocks A & B) would be



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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Rs.800/- per sq.ft. Thereafter, the construction of the second floor of the building was also entrusted to the respondent at a rate agreed namely Rs.750/- per sq.ft. Twelve items of work were set out in the agreement itself. In so far as the hostel was concerned, the rates were approved as were set out vide communication dated 08.8.2021 (Ex.C.4) and in so far as the workshop was concerned, vide communication dated 19.12.2011 (Ex.C.6). The construction of the ground and the first floors of the main building was completed and handed over in September 2010 and the second floor was handed over in May 2011. The hostel building was completed in January 2012 and the second floor of the workshop was completed in April 2012. The same were evident from the deposition of the witnesses. It was the claimant, which had supplied steel, cement and readymix concrete to the respondent.

13. The specific case of the claimant is that a meeting was held between the parties, in which, it was agreed that the computation of the steel price per sq.ft., used should be 3.5 Kgs instead of 5 Kgs, which was taken in the designs and that the steel



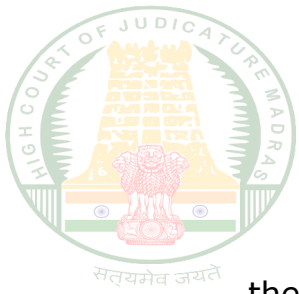
Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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consumption was again agreed and reworked, which would be evident from the minutes of the meetings held on 03.4.2010 and 04.4.2010 (Ex.C.10 and Ex.C.11). In view of the same, the stand taken by the claimant was that the Architect, under Ex.R.3, erroneously certified the bill without taking into account this rework done for the steel consumption and the same was subsequently corrected through rectification of certification under Ex.C.35 after the objections were raised by the claimant.

14. The Arbitral Tribunal rendered a finding that even C.W.1 had no knowledge about the certification of the final bill under Ex.C.35 and the fact that the claimant was requesting for details in this regard under Ex.C.25 would show that the claimant did not know the basis for rectification. The Arbitral Tribunal further rendered a finding that there was no evidence before it regarding the basis, on which, such rectification was effected.

15. At this juncture, this Court has to take into consideration a vital fact where totally three contractors were employed for doing



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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the entire work, which included the respondent and all the three had attended the meetings held on 24.12.2010 and 25.10.2010. The minutes of the meeting dated 24.12.2010 were available along with Ex.C.32. On going through the minutes of the meeting, it is seen that there was a discussion on steel price deduction and the second floor rate. The evidence of R.W.1 and more particularly the answers that were given during the cross examination would establish the fact that there was a discussion regarding steel price deduction. However, the respondent took a stand that they did not sign the minutes of the meeting.

16. The Arbitral Tribunal completely disregarded the discussions that took place between the parties on this issue as if there was no meeting between the parties touching upon this issue. However, the same Arbitral Tribunal, while dealing with a dispute arising with the other contractor namely one Mr.D.Prem, Proprietor, M/s.D.Square (Ref.: common order dated 04.12.2025 in O.P.Nos.48 of 2021 and 59 of 2022), took into consideration the understanding between the parties in the meeting and rendered a finding that the



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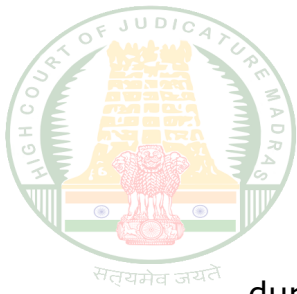


Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

steel consumption only touched upon the ground and the first floors and not the second floor and hence, rejected the reduction in rate in so far as the second floor was concerned. When the minutes of the meeting were common for all the contractors, it cannot be relied upon for one contractor and disregarded for the other.

17. It is also relevant to take note of the findings of the Arbitral Tribunal at paragraph 24 of the award wherein the Arbitral Tribunal relied upon the minutes of the meeting held on 27.4.2011 (Ex.C.33) to grant the relief of Rs.2,10,000/- towards screed concrete. Hence, either the minutes of the meeting will have to be relied upon in its entirety or they have to be completely disregarded. Unfortunately, the Arbitral Tribunal relied upon the same on certain occasions and completely disregarded while dealing with this issue.

18. The Arbitral Tribunal rendered a finding that the claimant had not let in any evidence for reduction from the rate agreed upon on account of steel usage. However, the finding goes against the answers that were given by R.W.1 for question Nos.19, 50 and 71



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

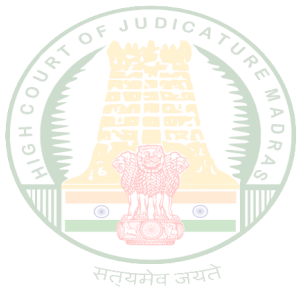
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during the cross examination. The Arbitral Tribunal ultimately rendered a finding that no case was made out by the claimant for reduction of rate on account of steel consumption and consequently rejected the claim made under disputes A & H while allowing counter claim No.1. ***This finding of the Arbitral Tribunal goes against the evidence available on record and hence, it requires the interference of this Court.***

Dispute B and Counter Claim Nos.5 & 6:

19. This issue deals with the defect in construction and rectification.

20. It was the specific case of the claimant that Clause 47 of the agreement provided for recovery of loss due to defective materials and the cost of repairs, that apart from that, Ex.C.7 would show the deficiencies in the work and that therefore, the recoveries that were effected were valid.



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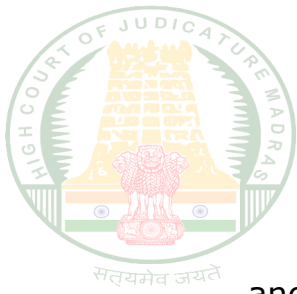


Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

21. On the contrary, the respondent took a stand that no bills were produced towards the cost of rectification to the extent of Rs.6,57,200/-, that the amounts that were withheld in Ex.R.3 were also objected, that apart from that, the screed concrete was an extra work done by the respondent and that there could be no deduction made for this work.

22. The issue regarding the defect in construction and rectification to be made was discussed in a meeting and it was recorded as the minutes of the meeting on 25.4.2011. For some reason, the respondent admitted this document, but disputed its contents. However, the respondent did not choose to deny this document at the relevant point of time and this objection was taken for the first time only before the Arbitral Tribunal.

23. The Arbitral Tribunal took into consideration Ex.R.3 and gave a finding that withholding a sum of Rs.2,10,000/- towards screed concrete was lawful and that with regard to the final painting



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

and cleaning of spillage, a further deduction was made under Ex.R3 to the tune of Rs.7.50 lakhs.

24. Having rendered such a finding that withholding of Rs.2,10,000/- under Ex.R.3 was lawful, the Arbitral Tribunal observed that there was a further deduction made under Ex.C.35 towards screed concrete to the tune of Rs.2,10,000/-. This finding was rendered without noticing the fact that there was no deduction towards screed concrete under Ex.R.3. Therefore, this finding rendered by the Arbitral Tribunal goes contrary to the records.

25. Thereafter, the Arbitral Tribunal went into the issue of external painting work and took into consideration Ex.R.12 and Ex.R.3 and made a guesswork that as against a sum of Rs.10 lakhs, at the best, only a sum of Rs.5 lakhs could be withheld. Consequently, the Arbitral Tribunal rendered a finding that the respondent would be entitled to the refund of Rs.5 lakhs that was withheld under Ex.R.3. The above finding rendered by the Arbitral Tribunal does not have any basis and it is a clear case of guesswork,



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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which would tantamount to a finding rendered on mere presumption. ***Hence, the same is liable to be interfered by this Court.***

Dispute C and Counter Claim No.2:

26. This issue pertains to the construction of parapet wall, which was taken to be an additional work by the respondent.

27. The Arbitral Tribunal, by relying upon Ex.C.2 agreement dated 22.3.2010, took into consideration the 12 items of work that were specifically mentioned and the construction of parapet wall and weathering course did not form part of those 12 items. In view of the same, the Arbitral Tribunal concluded that the parapet wall work in the second floor was a separate item, which was liable to be included in Ex.R.3, but it was completely omitted in Ex.C.35.

28. The case of the claimant was that the construction of parapet wall and weathering course always formed part of the main



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

WEB COPY

work and it was never agreed that it would be construed as an extra work.

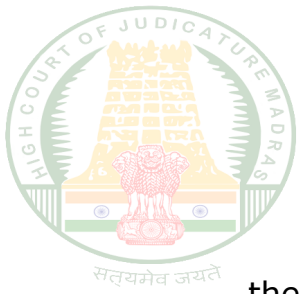
29. In the considered view of this Court, the Arbitral Tribunal took into consideration Ex.C.2 and Ex.R.3 and rendered a finding, which is a possible view on appreciation of evidence and the terms of agreement. **Hence, this finding does not require the interference of this Court.**

Dispute D:

30. This dispute pertains to usage of aluminium windows instead of UPVC material windows.

31. The case of the claimant was that the aluminium windows were supplied by them for the ground and the first floors and that necessary deductions have been made for the cost thereof.

32. On the contrary, the respondent took a stand that since, in the ground and the first floors, aluminium windows were used, for



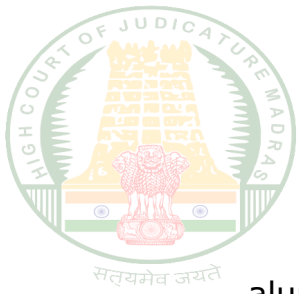
Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

WEB COPY

the sake of uniformity, even in the second floor, the respondent used the aluminium windows as per the instructions given by the Architect. Therefore, the respondent objected to the deductions made on this account.

33. The Arbitral Tribunal came to the conclusion that the aluminium windows were supplied by the claimant only for the ground and the first floors, that the respondent did not object to the certification made by the Architect under Ex.R.3 when such deduction was made and that in so far as the claimant was concerned, they were making a claim for the difference in cost for the ground and the first floors also instead of the second floor.

34. In the certified bill under Ex.R.3 and the rectified certified bill under Ex.C.35, the second floor area of the main building was not accounted for in so far as the aluminium windows were concerned. The respondent was not objecting to the measurements of the ground and the first floors and the respondent also admitted that they had followed the same process for uniformity and that the



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

aluminium windows were used in the second floor also. Under such circumstances, the Arbitral Tribunal did not take into consideration this admission made by the respondent and instead, proceeded to reject the claim. ***This finding is perverse since it disregards the evidence on record and is liable to be set aside.***

Dispute F:

35. This issue pertains to the price deduction for the areas under the corridor, staircase, headroom, etc.

36. The claimant took a stand that the cost of construction of the areas under the corridor and the staircase was 30% lesser than usual construction cost and that therefore, they were entitled to a sum of Rs.43,94,640/- from the final bill.

37. On the contrary, the respondent took a stand that the areas under the corridor and the staircase formed part of the general construction area and hence, the cost must be the same as that of the main building.



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

38. The Arbitral Tribunal rendered a finding that in Ex.C.35, a lower rate was applied erroneously without any basis contrary to what was certified under Ex.R.3 and that therefore, such deduction was unsustainable.

39. *In the considered view of this Court, the above finding rendered by the Arbitral Tribunal is supported by reasons and is certainly a possible view and that there is no scope for interfering with this finding in exercise of jurisdiction under Section 34 of the Act.*

Counter Claim No.11:

40. This issue pertains to the claim made towards carpentary work done for the third floor of the hostel.

41. The Arbitral Tribunal rendered a finding that the bill was raised on 22.5.2012 (Ex.R.9) and C.W.1 admitted receipt of the bill and therefore, the claimant was bound to make payment for the work done.



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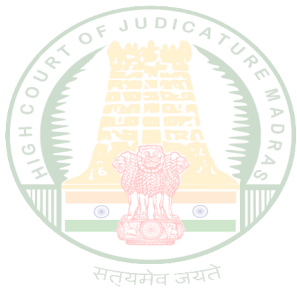
Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

42. The above finding was rendered by the Arbitral Tribunal purely based on the answer given by C.W.1 regarding the receipt of the bill and he had no knowledge about the non payment despite TDS deduction. ***If the TDS deduction was made and if there was no response on the side of the claimant, certainly, the view taken by the Arbitral Tribunal is a possible/plausible view.***

Counter Claim Nos.7 to 10:

43. ***In so far the rejection of counter claim Nos.7 to 10 are concerned, the Arbitral Tribunal rightly rejected the same since they were not proved and the finding rendered by the Arbitral Tribunal does not suffer from perverse or patent illegality.***

Counter Claim No.3:



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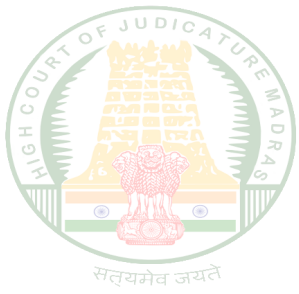
Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

44. In so far as counter claim No.3 is concerned, since the claim made under dispute F has been upheld by this Court, ***the respondent will be entitled to counter claim No.3.***

Award of interest:

45. In so far as the payment of interest is concerned, considering the fact that there was a commercial transaction involved between the parties, the interest component fixed by the Arbitral Tribunal at the rate of 12% per annum is upheld for the respective claims and the counter claims payable on either side.

46. One more important ground that was raised on the side of the respondent was to the effect that as per Clause 50.1 of the agreement, if any bill submitted was not certified by the Architect within 30 days, the bill was deemed to have been accepted by the claimant and that therefore, all those payments, which fell under this category, would have to be necessarily awarded in favour of the respondent.



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

47. In the considered view of this Court, one vital fact regarding the subsequent meetings, which were held with the contractors and which were reduced into writing by means of minutes of the meetings and which were also agreed on the side of the respondent, were completely disregarded by the Arbitral Tribunal. As stated supra, on certain occasions, reliance was placed on the minutes of the meeting and on some occasions, they were discarded. This procedure adopted by the Arbitral Tribunal led to a fundamental error that has crept in in this case to examine as to whether the subsequent understanding between the parties on certain issues, after those meetings, constituted novation of the earlier agreement dated 22.3.2010 (Ex.C.2) to that extent.

48. The bills that were certified under Ex.R.3 were subsequently rectified under Ex.C.35 only because of such understanding between the parties in the meetings that were held. Therefore, without properly appreciating the significance of those meetings and the understanding between parties, modifying/



Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

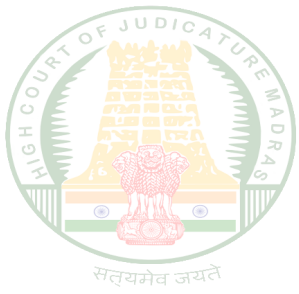
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altering/amending the original agreement, constitutes patent illegality.

49. Having rendered the above findings, this Court must see if the entire award has to be set aside since there is no scope for modification of the award or the valid portion of the award can be severed from the invalid portion in line with the judgment of the Hon'ble Supreme Court in ***Gayatri Balasamy Vs. ISG Novasoft Technologies Ltd. [reported in 2025 SCC OnLine SC 986]***.

50. In the considered view of this Court, the claims/counter claims that have been upheld and the claims/counter claims that have been interfered are severable and hence, the valid portion of the award can be severed from the invalid portion.

51. ***In the light of the above discussions, this Court holds that the claimant is entitled to an award under disputes A, H, B, D and G and the respondent is entitled to an award under counter claim Nos.2, 3, 4 and 11.***



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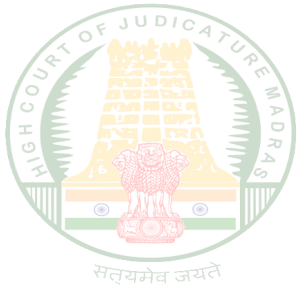
Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

52. In the result, both the original petitions are allowed in part. On 01.10.2021, this Court directed the claimant to deposit a sum of Rs.34,69,347/- before this Court on or before 29.10.2021. This amount was deposited with the Equitas Small Bank, Purasawalkam Branch, Chennai in an interest bearing account in the name of the Registrar General of this Court. This was recorded vide order of this Court dated 01.11.2021 in A.No.3967 of 2021 and the claimant was further directed to file the original fixed deposit receipt with the Registrar General of this Court. It is not in dispute that the said deposit is still alive. In the light of this common order, the claimant is permitted to withdraw the amount now lying in the fixed deposit along with accrued interest. Consequently, the connected application is closed. Considering the facts and circumstances of the case, there will be no order as to costs.

13.2.2026

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32/33



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Arb.O.P.(Com.Div.) No.49 of 2021
& O.P.No.442 of 2021

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Arbitration O.P.(Com.Div.) No.49
of 2021 & O.P.No.442 of 2021
& A.No.2474 of 2021

13.2.2026

33/33