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In the High Court of Judicature at Madras

Reserved on:	Delivered on:
09.2.2026	**18.2.2026**

Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.693 of 2022

Cantonment Board,
St.Thomas Mount &
Pallavaram, rep.by its
Chief Executive Officer,
Chennai-16 ...Petitioner

Vs

M/s.Babuji Civil Constructions,
Rep.by its Proprietor
C.Saravanan, No.50/1,
Bajanai Koil Street,
Mambalapattu, Villupuram.
602309 ...Respondent

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award in O.P.No.342 of 2020 dated 16.8.2022 passed by the learned Arbitrator and direct the respondent to bear the costs herein.

For Petitioner : Mr.C.Mohan &
Ms.Rexy Josephine Mary for
M/s.King & Patridge

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For Respondent : Mr.A.K.Sriram, SC for
Mr.K.J.Parthasarathy

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) challenging the award dated 16.8.2022 passed by the sole Arbitrator.

2. Heard both.

3. The facts leading to filing of this petition are as follows:

(i) The petitioner invited e-tenders dated 24.3.2017 for the work of maintenance and repairs to miscellaneous and public improvement during the year 2017-18. The earnest money deposit (EMD) was fixed as 1% of the estimated cost and the EMD would be returned to the unsuccessful tenderer. The security deposit of 5% of the contract value would also be received from the successful tenderer at the time of award of the contract.

(ii) The respondent/claimant participated in the tender and their bid was accepted by the petitioner vide letter dated 12.6.2017. Further, the respondent/claimant was directed to deposit the security

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deposit of Rs.8.5 lakhs and execute an agreement with the petitioner. The petitioner and the respondent/claimant entered into an agreement on 29.6.2017 and the respondent/claimant remitted a sum of Rs.8.50 lakhs towards security deposit and the work order was issued to the respondent/claimant.

(iii) The respondent/claimant had to complete the work on or before 31.3.2018. It was alleged that the respondent/claimant did not show any progress in the work and numerous complaints were received from the public. Hence, a show cause notice came to be issued by the petitioner to start/speed up the work, failing which, the respondent company/claimant would be blacklisted and the EMD and the security deposit would be forfeited. In turn, the respondent/ claimant gave reply and took a stand, which was not agreeable for the petitioner.

(iv) Ultimately, the petitioner, through letter dated 17.8.2017, terminated the contract thereby the respondent/claimant was blacklisted and both the EMD as well as the security deposit were also forfeited. The respondent/claimant, through letters C.8 to C.10, sought for refund of the security deposit and thereafter initiated the arbitration proceedings, pursuant to which, the dispute was referred to

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the sole Arbitrator.

(v) Before the sole Arbitrator, the respondent/claimant filed a statement of claim seeking for refund of the security deposit of Rs.8.50 lakhs along with interest.

(vi) Before the sole Arbitrator, the petitioner filed a statement of defence and took a stand that the respondent/claimant failed to carry out the work and thereby violated Clause 6 of the agreement, that there was absolutely no improvement in the work for more than one month from the date of the contract, that therefore, the petitioner had no other alternative except to terminate the contract and blacklist the respondent/claimant and also forfeit the security deposit and that such forfeiture was enabled in the agreement under Clause 3. Ultimately, the petitioner sought for dismissal of the statement of claim. The petitioner also made a counter claim for the loss sustained by them due to re-tender and increase in costs.

(vii) The sole Arbitrator framed the following issues for consideration:

> *"1) Whether the forfeiture of security deposit of Rs.8,50,000/- by the respondent from the claimant is tenable and valid in law?*

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2) Whether the claimant is entitled for refund of the security deposit of Rs.8,50,000/- as per the terms of the contract?

3) Whether the respondent is entitled to the counter claim of Rs.5,00,000/- for loss and additional cost incurred by them?

4) Whether the claimant is entitled for interest from the date of termination till the date of award at PLR plus 2%?

5) Whether the claimant is entitled for interest at 18% per annum from the date of award till the date of actual payment? and

6) Whether the parties are entitled to the costs of the proceedings before the Arbitral Tribunal?"

(viii) Both parties did not let in any evidence, but they relied upon certain documents. The respondent/claimant relied upon C.1 to C.12 and the petitioner relied upon D.1 to D.3.

(ix) The sole Arbitrator, on considering the facts and circumstances of the case and on appreciation of evidence, directed the petitioner to refund the security deposit of Rs.8.50 lakhs with 9% simple interest from 17.8.2017 till the date of actual payment and rejected the counter claim made by the petitioner. Aggrieved by that, the above petition has been filed before this Court.

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4. Learned counsel appearing on behalf of the petitioner submitted as follows:

(a) The respondent/claimant did not show any progress of work for more than a month and therefore, a show cause notice was issued and thereafter, the contract was terminated. The contract itself provided for forfeiture of the security deposit. It was a pre-estimated compensation that was fixed in the contract itself and in so far as the loss sustained by the petitioner was concerned, the respondent/ claimant had quoted at the rate of 55.77% above the Military Engineer Services Standard Schedule of Rates, 2010 (MES SSR 2010). But, after termination of the contract, this cost escalated to 68% above the MES SSR 2010.

(b) Apart from that, considering the fact that the respondent/ claimant did not even commence the work, it was not possible for the petitioner to demonstrate the actual loss. In view of the same, the claim made by the respondent/claimant was liable to be rejected and the counter claim must be ordered in favour of the petitioner.

5. Per contra, the learned Senior Counsel appearing on behalf of the respondent/claimant submitted as follows:

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(a) The contract was terminated hardly within 30 days from the date of commencement and the petitioner proceeded to forfeit the security deposit, which amounted to penalty and therefore, unless the petitioner proved the loss sustained by them, they would not be entitled to forfeit the security deposit.

(b) In order to substantiate this submission, he relied upon the judgment of the Hon'ble Apex Court in ***Kailash Nath Associates Vs. Delhi Development Authority [reported in 2015 (4) SCC 136].***

(c) The petitioner did not prove any loss or damages suffered by them by means of examining any witness or filing any documents. Therefore, they were not entitled to the counter claim made by them. Accordingly, the learned Senior Counsel sought for dismissal of this petition.

6. 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.

7. The agreement contemplated completion of work within a period of one year from the date of issuance of the work order. The

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agreement under Clause 11 also provided that in the event of the work remaining incomplete or uncommenced for more than 15 days from the date of issuance of the work order, the petitioner would be at liberty to terminate or rescind the contract. Clause 15 provided that where the contract was rescinded, the petitioner would be entitled to forfeit whole or part of the security deposit.

8. On carefully going through C.4, which was the work order, it is seen that the nature of works have been defined and that those works would have to be completed on or before 31.3.2018.

9. The petitioner issued a communication dated 08.8.2017 (C.5) informing that the respondent/claimant had not even started the work, that there was absolutely no progress in the work and that several complaints were received by the petitioner. Hence, the respondent/ claimant was informed that they should commence the work immediately, failing which, the contract would be cancelled, the security deposit would be forfeited and the respondent/claimant would also be blacklisted.

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10. On receipt of the notice, the respondent/claimant gave a reply dated 14.8.2017 (C.6) informing about the progress of work and undertaking to complete the work in all respects within the stipulated agreement time. The petitioner, not being satisfied with the progress of work made by the respondent/claimant, issued the letter of termination dated 17.8.2017 (C.7), terminated the agreement with immediate effect, blacklisted the respondent/claimant and forfeited the EMD and the security deposit as per the tender conditions.

11. The respondent/claimant, after nearly 8 months, gave a reply dated 13.4.2018 (C.8) and sought for refund of the security deposit to the tune of Rs.8.5 lakhs. Thereafter, further communications were sent by the respondent/claimant and it did not evoke any response from the petitioner.

12. The sole Arbitrator came to the conclusion that time was allowed upto 31.3.2018 for completion of work. Clause 3 of the agreement provided for the forfeiture of security deposit only where the work remained uncommenced and unfinished after the stipulated date. The stipulated date in this case is 31.3.2018.

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13. In the case in hand, the contract was terminated much before the stipulated date and the security deposit was forfeited. Therefore, a finding was rendered that unless and otherwise the party complaining proved the loss they suffered, the security deposit could not be forfeited.

14. Clause 15 provided that where the contract was rescinded in accordance with any of the conditions of the contract, the petitioner would be at liberty to forfeit whole or a part of the security deposit when any penalty or any other amount due from the contractor was recovered from the security deposit of the contractor.

15. In the case in hand, the contract was terminated within one month and three days from the date of issuance of the work order. Therefore, the only question that had to be answered by the sole Arbitrator was as to whether the petitioner could have forfeited the entire security deposit in view of the premature termination of the contract.

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16. It was contended on the side of the petitioner that the contract could be rescinded where the work remained incomplete or uncommenced for more than 15 days from the date of issuance of the work order and that there was no defect in the power vested with the petitioner to cancel/rescind the contract.

17. The only issue is as to whether it can further lead to forfeiture of the security deposit.

18. The sole Arbitrator took into consideration the above two clauses and came to the conclusion that the petitioner was not entitled to forfeit the security deposit. Thereafter, the sole Arbitrator went into the issue of proof of loss if such forfeiture of security deposit was in the nature of penalty. The sole Arbitrator rendered a finding that the respondent/claimant did not let in any evidence to show that they had sustained the loss.

19. The learned counsel appearing on behalf of the petitioner submitted that the respondent/claimant had not challenged the termination or the blacklisting of the respondent/claimant, that the

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only relief that was sought for was refund of the security deposit and that therefore, unless the termination was challenged, the consequences of termination namely forfeiture of the security deposit could not be challenged.

20. In the considered view of this Court, it is not necessary for the respondent/claimant to challenge the termination of contract if they are not inclined and the respondent/claimant will be entitled to seek for refund of the security deposit if they are satisfied with that relief.

21. The premature termination of the contract will not automatically entitle the petitioner to forfeit the entire security deposit. The Hon'ble Apex Court in the decision in ***Kailash Nath Associates*** made it clear that if the pre-estimated compensation is in the nature of penalty, the party has to necessarily prove the loss, failing which, the requirements under Section 74 of the Indian Contract Act will not be satisfied.

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22. The sole Arbitrator considered all the relevant judgments on this issue and also took into consideration the fact that the respondent/claimant did not let in any evidence for sustaining the loss and therefore, ordered for the refund of the security deposit with interest. This finding rendered by the sole Arbitrator certainly does not suffer from any perversity or patent illegality.

23. In so far as the rejection of counter claim was concerned, the learned counsel appearing on behalf of the petitioner submitted that the rate submitted by the respondent/claimant was 55.77% above the MES SSR 2010 whereas at the time of re-tender, the cost escalated to 68% above the MES SSR 2010 and that therefore, the petitioner certainly sustained the loss.

24. The sole Arbitrator, while dealing with this issue, rendered a finding that the petitioner had neither let in oral evidence nor any documentary evidence to prove that they sustained loss. Hence, the sole Arbitrator refused to award the counter claim sought for by the petitioner. This finding certainly does not suffer from any perversity or patent illegality.

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25. Even in so far as the award of interest was concerned, only 9% interest had been awarded from 17.8.2017 till the date of actual payment and the same is reasonable and does not warrant the interference of this Court.

26. In the light of the above discussions, this Court does not find any ground to interfere with the award passed by the sole Arbitrator dated 16.8.2022 under Section 34 of the Act.

27. ***Accordingly, the above petition stands dismissed with costs of Rs.25,000/- (Rupees twenty five thousand only) payable by the petitioner to the respondent/claimant.***

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