

Arb O.P(COM.DIV.) No. 62 of
2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 09.02.2026

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ORDERS PRONOUNCED ON : 17.02.2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 62 of 2021

AND

EP SR. NO. 123007 OF 2023

M/s Annai Builders Real Estate
Pvt Ltd
Rep. by its Special Officer
K.Prabhakaran, 150-151, Alpha
Centre, North Usman Road,
T.Nagar, Chennai 600 017.

Petitioner (s)

Vs

G.B.Sarath Kumar
Kalpataru Apartments, H-3B,
Koyambedu, Chennai 600 107.

Respondent(s)

PRAYER

Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 r/w Section 10 of the Commercial Courts Act, 2014 (Act No.4 of 2016) praying to set aside the award dated 30.11.2020 passed by the learned Sole Arbitrator Mr.G.M.Akbar Ali (Retd.,) in A.F.No.195/2017 in the matter of dispute and differences between the



petitioner and the respondent and to direct the respondent to pay the
cost of the proceedings.

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For Petitioner (s): Mr. K.Satheesh Kannan
Party in person
For Mr.Avinash Wadhvani
Respondent(s):

ORDER

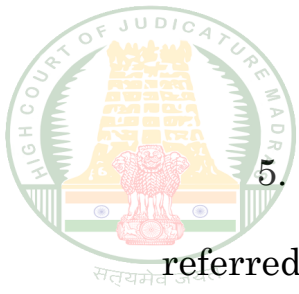
The petitioner has assailed the award passed by the Sole Arbitrator dated 30.11.2020 by filing the present petition under Section 34 of the Arbitration and Conciliation Act (for brevity hereinafter referred to as the “Act”).

2. The brief facts of the case are the respondent / claimant entered into a building contract agreement with the petitioner on 02.02.2011 for the construction of Plots, Smart Homes at Anagaputhur containing 92 Plots. As per the contract, the Contractor should construct in accordance with the detailed drawings given by the owner which was appended as Annexure I to the agreement and the specifications appended as Annexure II to the agreement.



3. During the execution of the Contract, the claimant raised 30 running bills, out of which 28 bills were cleared. However while raising bill Nos.29 and 30, disputes arose between the parties and according to the claimant, the amounts were not settled. Apart from the above, the contract envisaged completion within a period of one year. The provisional estimate, based on the working drawings was calculated at approximately Rs.12.58 Crores. Out of every running bill, 3% can be retained as retention amount and the same has to be paid within three months of the completion of the contract. Thus, 3% of the retention amount which was retained towards 28 bills which were cleared, was also not released.

4. The further case of the claimant is that on 19.03.2012 due to non payment of bills and pendency for over six months, a request was made to clear the pending bills. It was also informed by the contractor that due to non-availability of funds, the work on site is affected. The bill that was raised towards minor alterations / additions as required by the petitioner was raised on 28.05.2012 and this amount also remained unpaid.



5.

Since the amounts were not settled, the dispute was referred to the sole arbitrator and the claimant raised the following

claims :-

a. Rs.48,03,763/- (Forty Eight Lakhs Three Thousand and seven Sixty Three) towards outstanding payment of Running Bill Nos.29 and 30.

(b) Rs.33,36,432/- (Thirty Three Lakhs, Thirty Six Thousand and Four Hundred Thirty Two), being the retention amount of 3% on the running bills paid.

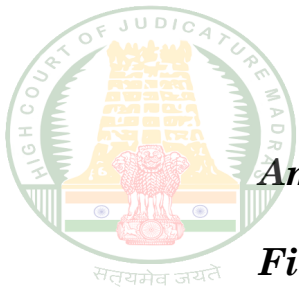
(c) Rs.70,66,022/- (Seventy Lakhs Sixty Six Thousand and Twenty Two) for the extra increase of the basement height by two feet

(d) Rs.9,80,000/- (Nine Lakhs Eighty Thousand) to the material at Site

(e) Rs.11,00,000/- (Eleven Lakhs) being outstanding payments towards the extra work carried out at the instance of the respondent.

(f) Rs.2,44,000/- (Two Lakhs and Forty Four Thousand) for the purchase of grills made, to be installed in the Windows.

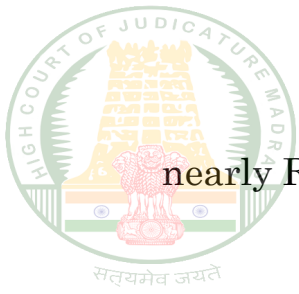
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Amounting to Rs.1,75.30,217/- (One Crore Seventy Five Lakhs Thirty Thousand and two Hundred and Seventeen) together with interest @ 24% p.a. until date of payment. The payment of Rs.50,00,000/- (Fifty Lakhs) as damages on account of loss of Business account of the mental harassment and cost of proceedings.

6. The petitioner filed statement of defence and took a specific stand that the respondent has paid much higher than the actual work that was carried out at the site by the claimant. According to the petitioner, the total value of the contract was Rs.12,58,55,050/- and the total amount that was paid to the claimant was Rs.10,83,44,952/-. This amount was 86% of the contract price and whereas, the work carried out was only 60%. The petitioner took a further stand that the claimant had stopped the work as early as on 19.07.2012 and the claimant had also agreed to complete the work only on payment of pending bills. The petitioner directed the claimant to rectify several defects identified. However, the claimant denies any defective work and was insisting for the payment of



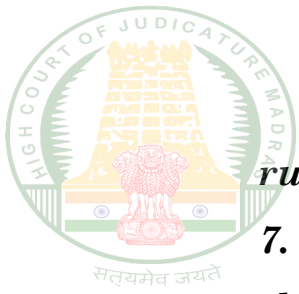
nearly Rs.1.95 Crores.

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7. The petitioner made a counter claim of Rs.97,24,495/- towards excess payment with 12% interest from the date of abandonment of work, penalty of a sum of Rs.1,38,44,155/- towards delay, Rs.6,59,55,664/- towards completion of the construction through another contractor and Rs.15,00,000/- towards damages including mental agony and a cost of Rs.10,00,000/-.

8. The sole Arbitrator based on the pleadings framed the following issues:-

- 1. Whether the claimant was forced to stop the work by the actions of the respondent?*
- 2. Whether the claimant has committed any breach of contract?*
- 3. Whether the claimant has caused delay in execution of the contract?*
- 4. Whether the claimant have submitted the last two running bills 29 and 30?*
- 5. Whether the respondent has paid excess payment over the running bills of the claimant?*
- 6. whether the claimant is entitled for a sum of Rs.48,03,763/- towards outstanding payment towards*



running bill Nos.29 and 30?

7. Whether the claimant is entitled for the return of the retention amount of Rs.33,00,000/-?

8. Whether the claimant is entitled for a sum of Rs.70,66,022/- towards extra increase of basement height by 2 feet?

9. Whether the claimant is entitled for a sum of Rs.11,00,000/- towards the extra work carried out at the instance of the respondent?

10. Whether the claimant is entitled for a sum of Rs.9,80,000/- towards the cost of materials left at site and a sum of Rs.2,44,000/- for the grills made and left at side?

11. Whether the claimant is entitled for a sum of Rs.50,00,000/- towards damages on account of loss of business and costs?

12. Whether the respondent is entitled for a sum of Rs.97,24,495/- being the excess amount paid?

13. Whether the respondent is entitled for a sum of Rs.1,38,44,155/- being the penalty for delay in execution of the contract?

14. Whether the respondent is entitled for a sum of Rs.6,59,55,664/- towards the cost incurred for the completion of the construction?

15. Whether the respondent is entitled for any

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*damages at Rs.15,00,000/- and a cost of
Rs.10,00,000/-.*

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16. To what relief the parties are entitled to?

9. The claimant examined CW1 and CW2 and filed four volume of documents. The petitioner relied upon three volumes of documents. Apart from that, the valuers report and the objection filed by the claimant was also taken on record.

10. The sole arbitrator on considering the facts and circumstances of the case and on appreciation of evidence passed an award dated 30.11.2020 directing the petitioner to pay to the claimant a sum of Rs.1,10,07,441.80/- within three months from the date of award failing which the same will become payable with interest at the rate of 18% per annum from the date of award till the date of payment.

11. Aggrieved by the above award, the present petition has been filed before this Court.

12. The petitioner appeared in person and made his submissions. The respondent is represented through a counsel and



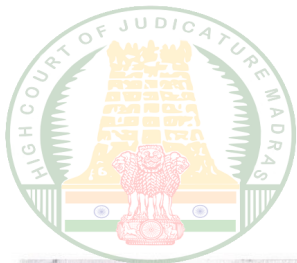
the learned counsel made his submissions.

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13. This Court has carefully considered the submissions made on either and the materials available on record and also carefully went through the award passed by the Sole Arbitrator.

14. The main ground that was raised by the petitioner was that insofar as running bill Nos.29 and 30 are concerned, duplicate claims have been made towards claims which had already been settled earlier. To substantiate the same, the petitioner pointed out instances where there was discrepancy in terms of the correct built up area and works which were already completed and paid once again claimed in these bills etc., The same has been explained in the brief written statement that was filed on behalf of the petitioner.

15. Apart from that, the petitioner also pointed out that for running bill Nos.1 to 28, the respondent had collected excess payments more than the work that was actually completed in the site. To establish this issue, the petitioner tabulated all the payments made and for proper appreciation, the same is scanned and extracted hereunder :-



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SRI RADHA NAGAR 93 Blocks - 1,33,967 sq.ft x 950/- = 12,72,68,650/- at ANAGAPUTHUR														
S.no	G.B.SARATH KUMAR CONSTRUCTIONS BILL Submitted Detiles			M/s ANNAI BUILDERS REAL ESTATE PVT LTD BILL PAID DETILS										
	Date	Description	Bill amount	Date	Description	Cheque no	Bank name	Amount	TDS PAID DETILS			Retention amount 3%	Time gap between bill issued & bill payment	
									TDS 1% PAID	Date	Cheque no			
1				27.10.10	Advance Amount	460144	TNMB	1,00,000						
2				02.02.11	Advance Amount	474890	TNMB	9,00,000						
3				03.02.11	Advance Amount	474891	TNMB	10,00,000						
4	02.03.11	Bill No.1 (15 Foundations)	21,37,500	04.03.11	Bill No.1 (15 Foundations)	561858	TNMB	18,52,000	21,375	04.03.11	561852	64,125	2 days	
5	17.03.11	Bill No.2 (37 Blks)	24,65,250	22.03.11	Bill No.2 (37 Blks)	561959	TNMB	21,66,639	24,653	22.03.11	561960	73,958	5 days	
6	29.03.11	Bill No.3 (60 Blks)	33,70,125	05.04.11	Bill No.3 (60 Blks)	562015	TNMB	30,35,320	33,701	05.04.11	562017	1,01,104	1 week	
7	18.04.11	Bill No.4 (69 Blks)	60,91,875	23.04.11	Bill No.4 (69 Blks)	562114	TNMB	56,48,200	60,919	23.04.11	562115	1,82,756	5 days	
8	11.05.11	Bill No.5 (69 Blks)	41,18,250	14.05.11	Bill No.5 (69 Blks)	562259	TNMB	37,53,520	41,183	14.05.11	562260	1,23,547	3 days	
9	01.06.11	Bill No.6 (82 Blks)	46,97,503	08.06.11	Bill No.6 (82 Blks)	562431	TNMB	43,09,603	46,975	08.06.11	562433	1,40,925	1 week	
10	23.06.11	Bill No.7 (105 Blks)	50,83,887	28.06.11	Bill No.7 (105 Blks)	562508	TNMB	46,80,531	50,839	28.06.11	562509	1,52,518	3 days	
11	15.07.11	Bill No.8 (131 Blks)	40,76,972	19.07.11	Bill No.8 (131 Blks)	562692	TNMB	37,13,893	40,770	19.07.11	562693	1,22,309	4 days	
12	28.07.11	Bill No.9 (231 Blks)	59,75,204	01.08.11	Bill No.9 (231 Blks)	561816	TNMB	55,36,196	59,752	01.08.11	561817	1,79,256	4 day	
13	11.08.11	Bill No.10 (146 Blks)	33,45,595	17.08.11	Bill No.10 (146 Blks)	61536	TNMB	30,11,771	33,456	17.08.11	61537	1,00,368	6 days	
14	18.08.11	Bill No.10 (Part 2 - 469 Blks)	59,03,118	23.08.11	Bill No.10 (Part 2 - 469 Blks)	61586	TNMB	56,66,993	59,031	23.08.11		1,77,094	5 days	
15	31.08.11	Bill No.12 (396 Blks)	29,87,389	10.09.11	Bill No.12 (396 Blks)	61756	TNMB	28,67,893	29,874	10.09.11	61587	89,622	1 week 3 days	
16	21.09.11	Bill No.13 (469 Blks)	36,08,884	26.09.11	Bill No.13 (469 Blks)	61842	TNMB	34,64,528	36,089	26.09.11	61757	1,08,267	5 days	
17	08.10.11	Bill No.14	59,93,213	18.10.11	Bill No.14	590205	TNMB	57,53,485	59,932	18.10.11	61843	1,79,796	1 week 3 days	
18	31.10.11	Bill No.15	31,58,277	08.11.11	Bill No.15	531398	TNMB	30,31,946	31,583	08.11.11	590206	94,748	1 week 1 day	
19	19.11.11	Bill No.16	62,18,063	26.11.11	Bill No.16	531487	TNMB	59,69,341	62,181	26.11.11	531399	1,86,542	1 week	
20	17.12.11	Bill No.17	25,45,845	24.12.11	Bill No.17	11428	TNMB	24,44,012	25,458	24.12.11	531488	76,375	6 days	
21	31.12.11	Bill No.18	36,65,988	09.01.12	Bill No.18	11151	TNMB	35,19,348	36,660	09.01.12	11429	1,09,980	1 week 2 days	
22	04.02.12	Bill No.19	54,35,339	10.02.12	Bill No.19	11356	TNMB	52,17,926	54,353	10.02.12	11152	1,63,060	6 days	
23	24.02.12	Bill No.20	31,80,972	28.02.12	Bill No.20	531682	TNMB	30,53,733	31,810	28.02.12	11357	95,429	4 days	
24	01.03.12	Bill No.21	39,58,275	13.03.12	Bill No.21	35327	TNMB	37,99,944	39,583	13.03.12	531683	1,18,748	1 week 5 days	
25	19.03.12	Bill No.22	44,83,517	27.03.12	Bill No.22	2663	TNMB	43,04,176	44,835	27.03.12	35328	1,34,506	1 week 1 day	
26	06.04.12	Bill No.23	42,30,006	12.04.12	Bill No.23	116913	TNMB	40,60,808	42,300	12.04.12	2664	1,26,900	6 days	

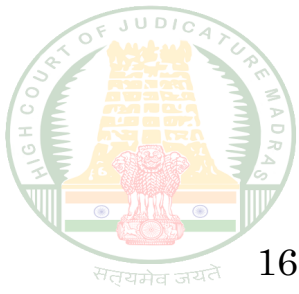


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27	19.04.12	Bill No.24	36,89,270	28.04.12	Bill No.24	117112	TNMB	35,41,699	36,893	28.04.12	116914	1,10,678	1 week 2 days
28	08.05.12	Bill No.25	29,15,781	14.05.12	Bill No.25	117247	TNMB	27,99,150	29,158	14.05.12	117113	87,473	6 days
29	22.05.12	Bill No.26	26,06,667	02.06.12	Bill No.26	117325	TNMB	25,02,400	26,067	02.06.12	117248	78,200	1 week 5 days
30	12.06.12	Bill No.27	31,19,876	20.06.12	Bill No.27	126090	TNMB	29,95,081	31,199	20.06.12	117376	93,596	1 week 2 days
31	23.06.12	BILL NO.28	21,51,762	02.07.12	BILL NO.28	126171	TNMB	20,65,691	21,518	02.07.12	126091	64,553	1 week 2 days
32	31.12.11	DEMOLITING DETAILS	51,222	09.01.12	DEMOLITING DETAILS	11149	TNMB	50,710	512	09.01.12	126172	9,547	1 week 2 days
33	31.12.11	3D1, 13B1 & B2, 14A1 & A2, 13 D1 & D2, 20C2,	3,18,230	09.01.12	3D1, 13B1 & B2, 14A1 & A2, 13 D1 & D2, 20C2,	11147	TNMB	3,05,501	3,182	09.01.12	11150		1 week 2 days
34	30.01.12	Bill No.2	1,05,265	17.02.12		11366	TNMB	1,04,212	1,053	17.02.12	11148		2 week 4 days
		Grand Total	11,16,89,120					10,72,26,250	11,16,891			33,45,980	

Note

G.B.SARATH KUMAR CONSTRUCTION'S Total Bill Amount	M/s ANNAI BUILDERS REAL ESTATE PVT LTD BILL PAID DETILS			M/s ANNAI BUILDERS REAL ESTATE PVT LTD BILL BALANCE TO BE PAID
	Bill Amount	TDS Paid Amount	Retention amount	
11,16,89,120.00	107226250	1116891	3345980	NILL



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16. The petitioner further stated that admittedly the respondent had not completed the work and therefore, there is no question of making the 100% payment since the payments are made at different stages based on the percentage of the work completed. In fact the petitioner had made excess payments for 86% and whereas the claimant had completed only 60% of the work. The petitioner has also raised a ground that the additional claim for the increase of the basement height by two feet, which was allowed by the sole arbitrator was not in accordance with the agreement and the usual trade practice. The petitioner also pointed out to certain findings of the sole Arbitrator which runs contrary to the evidence available on record. Finally, the petitioner questioned the rejection of the counter claim made by the petitioner and sought for the interference of the award and to reject the claims made by the respondent/ claimant and grant the counter claim sought for by the petitioner.

17. The learned counsel for respondent has taken a stand that the Sole Arbitrator had taken into consideration the oral and documentary evidence and has rendered findings which is certainly a



possible view taken by the Sole Arbitrator and that none of the ingredients under Section 34 of the Act has been satisfied warranting the interference of this Court.

18. This Court will first deal with the two running bill Nos.29 and 30 and also consider as to whether the petitioner had made excess payments over and above the running bills raised by the respondent/ claimant.

19. As per the agreement between the parties, Contractor shall be paid at the rate of Rs.950 per Sq.ft inclusive of all taxes and all other charges on the plinth area including balconies. As per Annexure 3, the mode of payment was agreed upon and for proper appreciation, the same is extracted hereunder:-

ANNEXURE III

Anagaputhur Provisional Estimate:-

Total plots - **92 Plots (6 Blocks)**

Total Area - **1,32,479 x 950 = 12,58,55,050/-**

**[Rupees Twelve Crores
Fifty Eight Lakhs Fifty Five Thousand
and fifty only)**



Advance - Rs.20,00,000
(Rupees Twenty Lakhs Only)

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Contractor Payment Mode:-

Sl.No.	Description	Percentage %
1.	Mobilisation Advance	1.5%
2.	Completion of Foundation	5.5%
3.	Completion of basement	8%
4.	Completion of GF Roof Slab	10%
5.	Completion of GF Brick Work	7%
6.	Completion of GF Plastering	8%
7.	Completion of FF Roof Slab	10%
8.	Completion of Brick Work	7%
9.	Completion of FF Plastering	8%
10.	Completion of External Plaster	4%
11.	Completion of Carpentry	5%
12.	Completion of Electricity	5%
13.	Completion of Flooring	10%
14.	Completion of Sanitary Fixtures	5%
15.	On Handing over	6%
	Total	100%

**Retention money will be deducted @ 3% on every bill,
payable 3 months after issuable of completion certificate.**



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20. From every bill, retention money will be deducted at 3% payable three months after issuance of completion certificate. The contractor's final bills will be scrutinised for payment after satisfactory completion and handing over the project and the same will be paid within two weeks. The payments towards running bills will be made after verification / certification. Keeping the above in mind, this Court went through the entire materials and found that insofar as running RA Bill Nos.1 to 28 are concerned, the same has been raised by providing all the necessary particulars and supporting documents which has also been verified and certified before the payments was made for RA Bill Nos.1 to 28. While making this payment, the retention charges of 3% has been deducted.

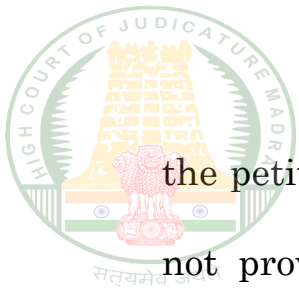
21. Insofar as RA Bill Nos.29 and 30 are concerned, even as per the Sole Arbitrator, it has not been presented in the same manner the earlier bills were presented. Admittedly, these bills were not certified and the petitioner raised an objection that there is duplication of claims since some of the claims were already made in the previous bills and had also taken a stand that excess payments



have been made even towards the previous bills in terms of the work that was actually completed and the actual payments that was made in excess by the petitioner and the Sole Arbitrator has not gone into the evidence and discussed about the same and has straight away come to the conclusion that since these two bills were received by the petitioner and the payment was not made, the petitioner is liable to make the payments against bill Nos.29 and 30.

22. The above finding rendered by the Sole Arbitrator is bereft of any reasons and unintelligible.

23. The Apex Court in ***[Dyna Technologies Pvt. Limited Vs. Crompton Greaves Limited]*** reported in ***2019 20 SCC Page 1*** held that the mandate under Section 31(3) of the Act is to have reasoning which is intelligible and adequate. Considering the fact that the sole Arbitrator in this case is a legally trained mind, compliance with this requirement becomes even more important. In the case in hand, the abrupt finding that has been rendered by the sole Arbitrator insofar as Bill Nos.29 and 30 by not even discussing the grounds raised by the petitioner and the materials relied upon by

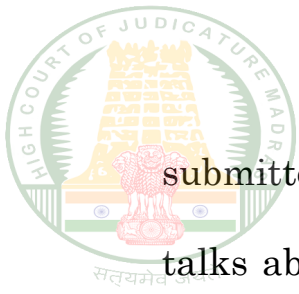


the petitioner, is unintelligible and the same would be equivalent to not providing any reasons at all.

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24. The above finding of this Court is further substantiated by the fact that the sole Arbitrator while dealing with the claim made by the respondent towards extra work, cost of materials left at site etc., has concluded that the bills raised by the claimant has not been verified or certified and therefore, the claimant is not entitled for any uncertified or unverified bill amounts. This finding completely contradicts the finding rendered by the sole Arbitrator while allowing Bill Nos.29 and 30 which also admittedly was not verified or certified. This glaring contradictions also makes this Court to come to the conclusion that the finding rendered by the Sole Arbitrator is unintelligible.

25. There is yet another glaring illegality in the award passed by the sole arbitrator. The specific case of the petitioner is that the claimant had completed only 60% of the work and whereas, excess payments have been made for 86%. In order to ascertain the actual work that was completed on the site, an expert was appointed who



submitted a report which runs to nearly 242 pages. In this report, it talks about the actual work that was completed. If admittedly only 80% of the work was completed even according to the claimant, there is no question of settling the entire final bill and there is also no question of releasing the retention amount since the retention amount retained can be returned only if the entire work is completed to the satisfaction of the petitioner. Even this issue has not been properly appreciated and dealt with by the Sole Arbitrator.

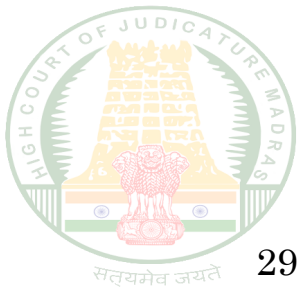
26. The Sole Arbitrator does not go into the report and deal with the same and straight away discarded the entire report with an observation that an expert opinion is only meant to assist the Court and it cannot be considered as a conclusive proof. It is quite unfortunate that the Sole Arbitrator even without dealing with the detailed report submitted by the expert choose not to even make a reference to it. It is true that the report of the expert may not be a conclusive proof. But, however, it is a very relevant fact which will have a bearing while dealing with the issue of the alleged excess payments said to have been made by the petitioner. Thus, the material evidence that was available was not considered by the Sole



Arbitrator and it was rejected on the ground that already bill Nos.1 to 28 have already been verified and certified and paid and therefore, there is no need to consider this report. This finding was rendered in spite of detailed materials placed by the petitioner to establish that work was actually completed only to the tune of about 60% and whereas payments made towards the same were to the tune of about 86%.

27. There is another claim pertaining to extra work said to have been done by the claimant to increase the basement height by two feet. The specific stand taken by the petitioner is that it forms part of the basement work and it cannot be construed as an additional work. However, the sole arbitrator considered the same as extra work and awarded a sum of Rs.28.67 lakhs.

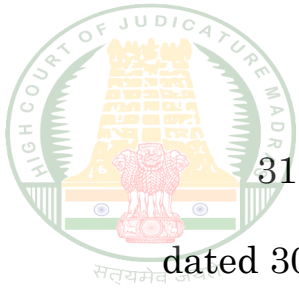
28. The counter claims made by the petitioner has been rejected.



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29. Considering the manner in which the Sole Arbitrator has proceeded in this case while dealing with the main issues, this Court finds that it is difficult to separate / sever the valid portion of the award from the invalid portion. Hence, this Court is not inclined to go into the counter claims made by the petitioner since the above findings rendered by the Sole Arbitrator will have a bearing while deciding the counter claims also.

30. On an overall reading of the award passed by the Sole Arbitrator, this Court finds that the findings rendered for the main issues are unintelligible and it was given in complete disregard to the evidence available on record and the findings are also mutually contradictory. Hence, this Court is inclined to interfere with the entire award on the ground of perversity and patent illegality. It will be left open to the parties to refer the dispute afresh to the new Arbitrator in accordance with law.



31. In the result, the award passed by the Sole Arbitrator dated 30.11.2020 is hereby set-aside and this petition stands allowed.

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No costs. Consequently, the EP D No.123007 of 2023 is closed.

17-02-2026

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Index:Yes/No

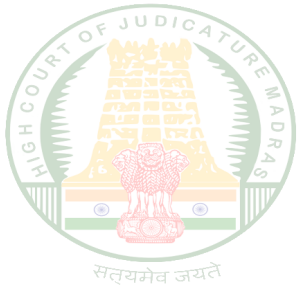
Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

G.B.Sarath Kumar
Kalpataru Apartments, H-3B,
Koyambedu, Chennai 600 107.



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