

C.M.A(MD).No.108 of 2020

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RESERVED ON: 03.07.2024

DELIVERED ON: 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD).No.108 of 2020

and CMP(MD).Nos.1888 & 8135 of 2024

Ayyasamy

...Appellant/1st Respondent

Vs

1.A.Shanmugavel (died)

....1st Respondent/Petitioner

2.A.Paramasivam

3.Narayanan

4.Murugan

5.Sole Arbitrator

Hon'ble Mrs.Justice Prabha Sridevan

“Atreya” New No.23, Old No.7

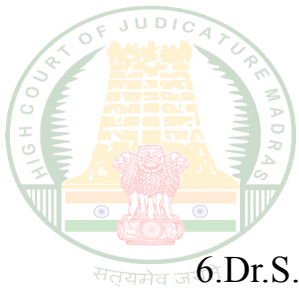
Krishnasamy Avenue

Off Luz Church Road

Mylapore

Chennai 600 004

....Respondents/Respondents



6.Dr.S.Arunagiri Alias

7.Dr.S.Umapreethi

8.Usha

(Respondents 6 to 8 are brought on record as LR's of the deceased 1st respondent vide Court order dated 21.03.2024)

PRAYER: The Civil Miscellaneous Appeal is filed under Section 37(a) of the Arbitration and Conciliation Act, 1996, to set aside the order dated 22.10.2019 passed by the Principal District Court, Tirunelveli in Arb.O.P.No.137 of 2018 and allow the appeal.

For Appellant : Mr.Sricharan Rengarajan
Senior Counsel for
Mr.C.Ramesh

For R2 & R3 : No appearance

For R4, R6 to R8 : Mr.S.Meenakshi Sundaram
Senior Counsel
For Mr.R.T.Arivukumar

R5 : Arbitrator

JUDGEMENT

(A). Factual Matrix:

The respondents 1 to 4 in the appeal had filed O.S.No.588 of 2012 before the First Additional District Munsif Court, Tirunelveli as



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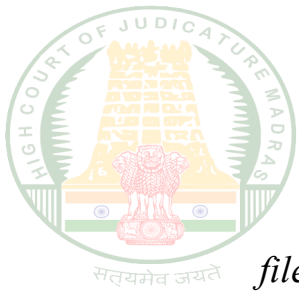
against the appellant herein for declaration that they are entitled to participate in the administration of Hotel Arunagiri and for a consequential injunction. The appellant herein had moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 relying upon the arbitration clause in the partnership deed dated 01.04.1994. Section 8 application was dismissed by the trial Court. Ultimately, when the matter was heard by the Hon'ble Supreme Court, the Hon'ble Supreme Court was pleased to appoint Hon'ble Mrs. Justice Prabha Sridevan, former Judge of this Court as a Sole Arbitrator by an order dated 04.10.2016. The first meeting was held on 01.12.2016 at the residence of the Sole Arbitrator.

2. Clause 5 of the minutes which is relevant for disposal of this appeal is extracted as follows:

“5. In consultation with the parties and the learned counsel present for the respective parties and with their concurrence, the following directions are issued:

(a) The statement of claim, with the supporting documents, shall be filed on or before 4th January 2017 after serving them on the respondent's counsel.

(b) The reply/defence to the statement of claims along with counter claim, if any, with supporting documents, shall be



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filed on or before 25th January 2017 after serving them on the claimant's counsel.

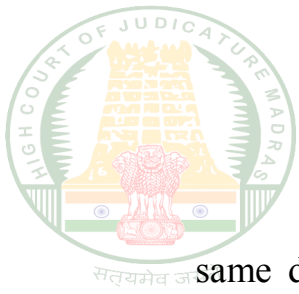
(c) Rejoinder to the defence statement and reply to the counter claim shall be filed on or before 8th February 2017 after serving them on the respondent's counsel.

(d) On completion of pleadings, the counsel shall exchange the draft issues on or before 18th February 2017.

(e) The issues shall be framed by the Sole Arbitrator on 22nd February 2017 at 10.00 a.m at "Atreya", New No.23 (Old No.7), Krishnaswamy Avenue, Off: Luz Church Road, Mylapore, Chennai 600 004.

*(f) If for any reason, there is a delay in any one of the parties adhering to the time fixed for any one of the stages set down above exchange of pleadings between the parties, **a revised date for the open sitting of the Sole Arbitrator will be fixed under intimation to the parties on either side.** "*

3. On 02.01.2017, the claim petition was filed by the claimant and the defence statement was filed on 21.01.2017. Reply statement was filed by the claimant in February 2017. The claimant had filed the proof affidavit on 12.04.2017 and he was cross examined by the respondents counsel on 23.05.2017. The third respondent had filed his proof affidavit on 19.06.2017 and the counsel for claimant had cross examined him on the



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same date. It was adjourned for further cross examination of RW1 and further cross was conducted on 24.06.2017.

4.The second witness on the side of the respondents, RW2 had filed his proof affidavit on 26.07.2017 and he was cross examined by the claimant's counsel on 12.09.2017. On 12.10.2017, both the counsels have filed their written submissions and orders were reserved. The Arbitration Award was passed on 28.03.2018. These dates and events are not in dispute.

5.The third respondent in the claim petition had filed the Arbitration O.P.No.137 of 2018 before the Principal District Court, Tirunelveli under Section 34 of the Arbitration and Conciliation Act, 1996. The main grounds of attack on the arbitration award are as follows:

(a)The award has not been passed by the Hon'ble Arbitrator within a period of 12 months from the date on which the Arbitral Tribunal had entered upon the reference.

(b).The Arbitrator has not mentioned the date of receipt of the orders from the Hon'ble Supreme Court and therefore, the parties were not aware of the expiry of the 12 months period.



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(c).The Hon'ble Arbitrator has not obtained consent of the parties for extension of time either before or after expiry of 12 months period. The award is bereft of the said details.

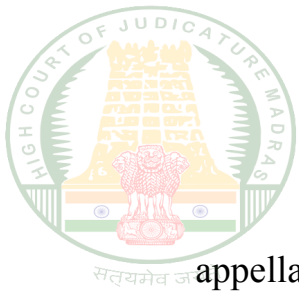
(d) Therefore, the period of 12 months mandate the Arbitrator gets terminated and the Arbitrator becomes functus-officio.

(e) The award passed beyond the statutorily laid time limit is null and void.

6. The District Judge had chosen to allow the appeal and set aside the award on the sole ground that the award has been passed beyond a period of 12 months in violation of Section 29-A of the Arbitration and Conciliation Act and allowed the arbitration petition. The District Judge had further recorded that since the award is set aside on the ground of limitation, the Court need not go into the other grounds raised by the petitioner/respondent in the claim petition. Challenging the said order of the learned District Judge, the present appeal has been filed by the claim petitioner.

(B)Contentions of the learned Senior Counsel appearing for the appellant are as follows:

7.The learned Senior Counsel appearing on behalf of the

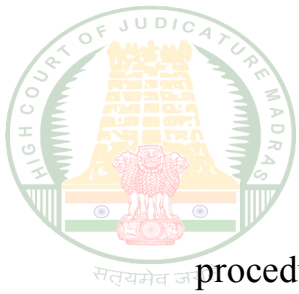


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appellant had contended that the Arbitrator had reserved orders on 12.10.2017 after hearing the final submissions on either parties and the award was pronounced on 28.03.2018. During the said period, the respondents have not raised any objection or protested to the effect that the mandate of the Arbitrator had expired. He had further contended that by awaiting for the Arbitrator's award, the respondents have demonstrated their implied consent to the extension of the arbitral period. Since the award was not in their favour, the respondents have raised a technical objection and the same should not be entertained.

8.The learned Senior Counsel appearing for the appellant had further contended that Section 29(A)(3) provides for extension of the arbitral period and the same need not be in writing. The consent can also be deemed or implied which can be inferred by the conduct of parties. The learned Senior Counsel had relied upon a judgement of the Hon'ble Supreme Court reported in **2023 SCC Online HP 944 (Balak Ram Vs. NHAI)** to impress upon the Court on the above said principles of law.

9.The learned Senior Counsel for the appellant had further contended that Section 29-A is only a procedural law and it does not create any new rights or liability. Therefore, the respondents cannot use this

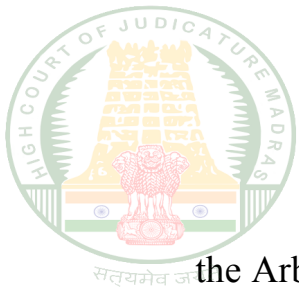


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procedural lacuna to undo the whole arbitration proceedings. He had further contended that the respondents having actively participated in the proceedings, later cannot turn around and contend that the mandate of the Arbitrator has stood terminated after the expiry of 12 months period. When the respondents have participated even after expiry of the arbitration period, the Court is always empowered to extend the time for passing of the award even in a case where the award has already been passed.

10.The learned Senior Counsel appearing for the appellant had contended that by mutual consent of the parties, time can be extended for a further period not exceeding 6 months. However, the said provision is silent as to whether the consent has to be expressed or it can be implied also. He had further contended that the evidence and cross examination of RW1 were concluded on 24.06.2017. The respondents had filed a memo seeking adjournment and therefore, the cross examination of RW2 was delayed until 12.09.2017.

11.The learned Senior Counsel had further contended that the delay, if any, is attributable only to the respondents herein and they are unrelated to the Arbitrator's conduct. Even assuming that that Arbitrator had entered upon reference on 04.10.2016 itself, the final hearing before



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the Arbitrator was concluded only on 12.10.2017. The respondents herein had participated in the proceedings without raising any objection whatsoever. Therefore, such a conduct would clearly establish the implied consent of the respondents herein for continuing the arbitration proceedings beyond a period of 12 months. Even after reserving the orders, the respondents never made any attempt to convey the Arbitrator with regard to the termination of mandate. Only after the award was pronounced, such a ground has been raised in the arbitration proceedings.

12.The learned Senior Counsel had further contended that the mandate of the Arbitrator shall get terminated unless the period is extended. The Court is empowered to extend the period either prior to or after expiry of the period so specified in the Act. Therefore, it is clear that the mandate of an Arbitrator can be extended even after expiry of the time specified in the section. In the present case, the award has been passed within 5 months from the date of expiry of 12 months period and therefore, passing of the award beyond a period of 12 months cannot be so deterrent to invoke the provisions of termination of mandate.



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13.The learned Senior Counsel appearing for the appellant had further contended that the appellant herein had filed CMP(MD).No.8135 of 2024 to extend the time to pass the award in the arbitration proceedings. He had further contended that the Court has got discretion to extend the mandate. In fact, extending the time would close the litigation which is spanning over several years. On the other hand, if the award is set aside on the ground of delay, it would only result in reopening of the entire dispute.

14.The learned Senior Counsel relying upon the following judgments and had prayed for allowing the appeal.

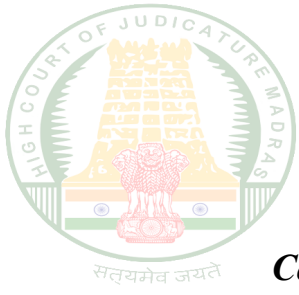
***(a) 2022-MPHC-JBP-54325: MANU/MP/3427/2022
(Rajesh Kaila Vs.Union of India and others)***

***(b) 2023 SCC Online Del 2990 (Wadia Techno
-Engineering Services Limited Vs. Director General of
Married Accommodation Project)***

***(c) 2023 SCC Online Del 7135 (ATC Telecom
Infrastructure Private Limited Vs. Bharat Sanchar Nigam
Limited)***

***(d) 2023 SCC Online Bom 2575 (Nikhil H.Malkan
and others Vs. Standard Chartered Investment and Loan
(India) Limited)***

***(e) Power Mech Projects Ltd., Vs. Doosan Power
Systems India, order dated 07.05.2024 of the Delhi High***



Court in O.M.P(Misc.).No.6 of 2024.

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(C) Contentions of the learned Senior Counsel appearing for the respondents are as follows:

15.Per contra, the learned Senior Counsel appearing for the respondents herein had contended that the Arbitrator was appointed by the Hon'ble Supreme Court by its order dated 04.10.2016 and the Arbitrator had communicated to the parties of her first sitting by her letter dated 03.11.2016. Therefore, this is the date on which the Arbitration Tribunal had entered upon the reference as contemplated under Section 29(A)(1) of the Arbitration and Conciliation Act. Therefore, the proceedings have to be concluded within the period of 12 months from the date. However, the award was passed only on 28.03.2018.

16. In the letter addressed by the Arbitrator of her first sitting, the Arbitrator has not mentioned about the date on which she received her letter of appointment. Therefore, we have presumed that she had received the letter of appointment between 04.10.2016 to 03.11.2016. For extending, further period of 6 months, parties have to give their consent for extension. However, in the present case, there is no evidence that the



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consent has been given by either of the parties between the expiry of 12 months period and pronouncement of award.

17.The learned Senior Counsel had further contended that under Section 29(A)(4) of the Act, the mandate of Arbitrator gets terminated automatically if the award is not passed within a period of 12 months ie. on or before 02.11.2017. Therefore, the survival of the mandate depends upon the consent of the parties. As far as the present case is concerned, there is neither express consent given by the parties nor there is any order of the Court extending the time of arbitration.

18.The learned Senior Counsel appearing for the respondents had further contended that the dates on which the respondents had participated in the arbitration proceedings fall within the 12 months period. Therefore, mere participation in the arbitration proceedings would not in any way amount to either express or implied consent for continuation of the arbitration proceedings.



19.The learned Senior Counsel had relied upon the following

judgements:

(a) 2020 (6) MLJ 178 (Suryadev Alloys and Power Pvt.Ltd.,Vs. Shri Govindaraja Textiles Pvt.Ltd.)

(b)(2020) 1 ArbiLR 183 (Ahsok Kumar Mandhyani Vs. Union of India and others)

(c)2024 (1) ARBLR 289 Clause 7 = 2024 SCC Online Calcutta 174 (Multiplex Equipments and services private limited Vs. Bagzone Lifestyles Private Limited (Calcutta High Court)

(d) 2020 (1) MLJ 169 (K.Dhanasekar, Engineering Contractor Vs. Union of India Rep.by General Manager)

(e) 2021 (4) CTC 67 (G.N.Pandian Vs. S.Vasudevan Managing Director, Ozone Projects Private Limited and others).

20.The learned Senior Counsel appearing for the respondents had relied upon the judgement of our High Court reported in **2020 (6) MLJ 178 (Suryadev Alloys and Power Pvt.Ltd.,Vs. Shri Govindaraja Textiles Pvt.Ltd.)** and contended that the Arbitral Tribunal becomes functus officio after 12 months, unless the said period is extended by the



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written consent submitted by the parties. The learned Senior Counsel had further contended that the judgment relied upon by the appellant reported in **2024 HHC 2975 (Hari Singh Vs. National Highways Authority of India)** that presuming deemed consent from the conduct of the parties arise under the National Highways Act. In the said case, the parties have participated in the proceedings even beyond a period of 12 months. Therefore, the Court inferred consent. However, in the present case, the proceedings have been concluded within 12 months and the award has been passed beyond a period of 12 months. Therefore, the judgment is not applicable to the facts of the present case.

21. The learned Senior Counsel had further contended that the application in CMP(MD).No.8135 of 2024 has been filed seeking extension of time for passing of the final award in the arbitration proceedings. First of all the said application is not maintainable, in view of the fact that already arbitration award has been passed. That apart, no such application was filed pending arbitration proceedings or during the pendency of the present appeal. Only when the final arguments were heard in the appeal, the present application has been filed and the same is not maintainable and it has to be dismissed.



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22.The learned Senior Counsel had further contended that this Court sitting as a appellate authority exercising its power under Section 37 of the Arbitration and Conciliation Act has got very narrow scope to entertain an appeal on merits. The learned Senior Counsel had relied upon the judgment of the Hon'ble Supreme Court reported in **2024 SAR (Civil) 615 National Highways Authority of India Vs. M/s.Hindustan Construction Company Ltd.)** in support of his submissions. Hence, he prayed for dismissal of the application seeking extension of time and the appeal filed by the appellant herein.

23.I have considered the submissions made on either side and perused the material records.

(D) Discussion:

24.The Hon'ble Supreme Court by an order dated 04.10.2016 has appointed Hon'ble Mrs.Justice Prabha Sridevan a retired judge of Madras High Court as sole Arbitrator. The Arbitrator has passed an award on 28.03.2018 after hearing either parties. This award has been put to challenge by the respondents in the arbitration proceedings before the District Court, Tirunelveli in Arbitration O.P.No.137 of 2018. Though several arguments were raised by either parties, the learned District Judge



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was pleased to allow the arbitration petition on the sole ground that the award has been passed beyond a period of 12 months from the date of Arbitral Tribunal had entered upon the reference. No other reason has been assigned by the District Judge to set aside the award.

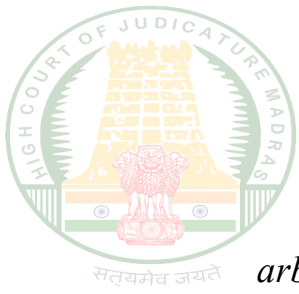
25. Therefore, the only issue that arises for consideration in the present appeal is whether the award was passed beyond a period of 12 months from the date on which the Arbitral Tribunal had entered upon the reference and if so, whether there was any consent of the parties to extend the period of arbitration.

26. Section 29-A of the Arbitration and Conciliation Act, 1996 has amended with effect from 23.10.2015 is extracted as follows:

29A. Time limit for arbitral award.--(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation- For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the



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arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

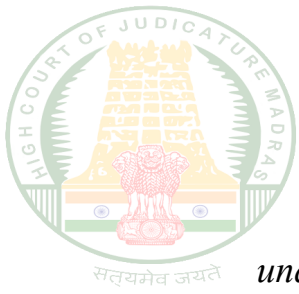
(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed



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under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

27.A perusal of the above said section reveals that the arbitration award has to be made with a period of 12 months from the date on which the arbitral tribunal entered upon the reference. In case, if the award is not made within the period, the mandate of the Arbitrator shall terminate. However, this proposition is subject to the following exception.

(a)The parties by consent can extend the period for making the award for a further period of not exceeding 6 months.

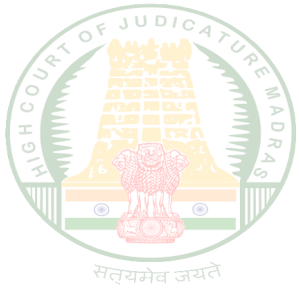


(b)The Court has got power to extend the period of arbitration either prior to or after expiry of either 12 months period or the extended 18 months period.

(E).The date on which the Arbitral Tribunal had entered upon the reference:

28.The dispute of the parties was adjudicated upon by the Hon'ble Supreme Court in a judgement reported in **(2016) 10 SCC 386 (A.Ayyasamy Vs. A.Paramasivam and others)** on 04.10.2016. The Hon'ble Supreme Court after holding that mere allegation of fraud by one party as against the others would not sufficient to exclude the subject matter of the dispute from arbitration proceedings and proceeded to appoint Mrs.Justice Prabha Sridevan, former judge of this Court as sole Arbitrator.

29.The sole Arbitrator had addressed a communication to both the parties on 03.11.2016 to the effect that she had received certified copy of the judgment of the Hon'ble Supreme Court and she had requested the parties to be present in person or through counsel on 1st December 2016. The date on which the certified copy of the Hon'ble Supreme Court was received by the Sole Arbitrator is not reflected to in the said letter.



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30.As per explanation to Section 29-A of the Act, the Arbitral Tribunal shall be deemed to have entered upon the reference on the date on which the Arbitrator or all the Arbitrators, as the case may be, have received notice, in writing of their appointment. However, in the present case, the sole Arbitrator was not appointed by the parties, but has been appointed by the Hon'ble Supreme Court. Therefore, the explanation to Section 29-A(1) of the Arbitration and Conciliation Act, 1996 is not helpful in deciding the issue.

31.A perusal of the grounds of appeal filed before the District Court reveals that both the parties never knew the date on which the Arbitral Tribunal had entered upon the reference.

32. The learned District Judge has taken into consideration the date on which the Sole Arbitrator had addressed a letter to the parties, namely on 03.11.2016 as the date on which the Sole Arbitrator had entered upon the reference. The learned District Judge had proceeded to hold that since the award has not been passed on or before 02.11.2017, the award is in violation of Section 29-A of the Arbitration and Conciliation Act, 1996 and proceeded to allow the arbitration petition.



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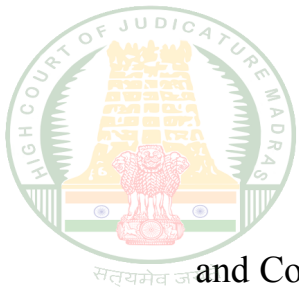
33. In view of the above said facts, it is clear that the date on which the Sole Arbitrator had **received** the certified copy of the order of the Hon'ble Supreme Court is not made available. The parties have also not chosen to find the said date. Therefore, this Court is of the considered opinion that the date on which the Sole Arbitrator had entered upon the reference could be safely fixed as 03.11.2016.

(F) Whether the award was passed within the time frame fixed under Section 29-A of the Arbitration and Conciliation Act, 1996.

34. Since the date of entering upon the reference has been decided as 03.11.2016, the Arbitration Award ought to have been passed on or before 02.11.2017. Both the parties have submitted their written arguments on 12.10.2017 and the order was reserved by the Sole Arbitrator on the same date. The award was passed only on 28.03.2018. Therefore, it is clear that the award was not passed within a period of 12 months from the date on which the Arbitral Tribunal had entered upon the reference.

(G) Extension of period application filed before this Court.

35. The appellant herein had filed CMP(MD).No.8135 of 2024 before this Court on 24.06.2024 under Section 29-A(4) of the Arbitration



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and Conciliation Act, 1996 to extend the time to pass the final award in the arbitration proceedings. This application was stoutly resisted by the respondents herein contending that the present application is not maintainable in view of the fact that already Arbitration Award has been passed. The learned counsel for the respondents had further contended that no such application was filed during the pendency of the arbitration proceedings or during the pendency the appeal. Hence, he had prayed for dismissal of the said application.

36.The Hon'ble Supreme Court in a judgment reported in **(2024) 4 MLJ 557 (SC) (Chief Engineer (NH) PWD (Roads) Vs. BSC & C and C JV)** while considering the Special Leave Application filed as against the dismissal for an application for extension of time by Meghalaya High Court , had proceeded to hold as follows:

Paragraph Nos. 2 and 3 are extracted as follows:

2.The power under sub-Section (4) of Section 29A of the Arbitration Act vests in the Court as defined in Section 2(1)(e) of the Arbitration Act. It is the principal Civil Court of original jurisdiction in a district which includes a High Court provided the High Court has ordinary original civil jurisdiction.



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3. In this case, the High Court does not have the ordinary original civil jurisdiction. The power under sub-Section (6) of Section 29A is only a consequential power vesting in the Court which is empowered to extend the time. If the Court finds that the cause of delay is one or all of the arbitrators, while extending the time, the Court has power to replace and substitute the Arbitrator(s). The said power has to be exercised by the Court which is empowered to extend the time as provided in sub-Section (4) of Section 29A of the Arbitration Act.”

37. The Hon'ble Supreme Court has held that when the High Court does not have an ordinary original civil jurisdiction, the High Court cannot exercise powers under Section 29-A(4) of the Arbitration and Conciliation Act. Admittedly, Madurai Bench of Madras High Court does not have ordinary original civil jurisdiction. Therefore, the said application is not maintainable. That apart, Section 29-A(4) of the Act empowers the Court to extend the period, only prior to or after the expiry of the period of 12/18 months and not after passing of the award. Therefore, the said application is not maintainable and the same stands dismissed.



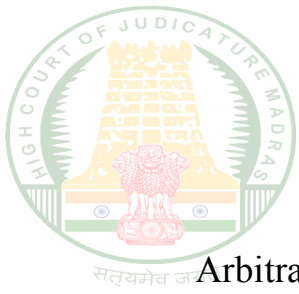
(H)Whether arbitral period got extended by consent of the parties:

38. It is an admitted case of both the parties that none of them have given their consent in writing before the Sole Arbitrator for extending the period of arbitration beyond a period of 12 months.

(I) Implied consent and waiver:

39.This Court has already arrived at a conclusion that the Sole Arbitrator had entered upon the reference on 03.11.2016. Therefore, the award has to be passed on or before 02.11.2017. In the present case, both the parties have submitted their written arguments on 12.10.2017 and the award has been passed on 28.03.2018.

40.The learned counsel appearing for the appellant had contended that when the respondents have not raised any objection with regard to the continuation of the arbitration proceedings beyond 02.11.2017, it should be construed that there was an implied consent on the side of the parties for continuation of the arbitration proceedings. The learned counsel had relied upon the judgment reported in **2023 SCC Online HP 944 (Balak Ram and others Vs. NHAI)** to impress upon the Court that the consent of the parties envisaged under Section 29A(3) of the



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Arbitration and Conciliation Act for extending the arbitral period need not necessarily be either express or in writing. It can be a deemed consent, an implied consent of the parties, which can be gathered from their acts and conduct. He had further contended that the acquiescence of the respondents in the proceeding with the arbitration case beyond 12 months, without raising any objection, to the continuation of the proceedings amounts to implied consent. Therefore, the award passed on 28.03.2018 is very well within a period of 6 months beyond 12 months period from the date on which the Arbitral Tribunal entered upon the reference.

41. After orders were reserved on 12.10.2017 and the period of 12 months had expired on 03.11.2017, the respondents herein have not raised any objection and waited till passing of the award. As per Section 29-A(3) of the Arbitration and Conciliation Act, the parties are at liberty to extend the period beyond 12 months, for a further period not exceeding 6 months. Therefore, it is clear that the parties are at discretion to seek extension of period of arbitration proceedings for a further period of 6 months. The award in the present case has been passed within a period of 6 months from the date of completion of 12 months.



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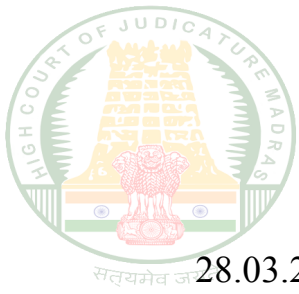
42. *Section 4 of the Arbitration and Conciliation Act, 1996*

“4. Waiver of right to object.- *A party who knows that-*

(a)any provision of this Part from which the parties may derogate, or

(b)any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.”

43.The respondents are very well aware that Section 29-A(1) of the Act provides for an outer limit of 12 months for passing of an award from the date on which the Arbitrator had entered upon the reference. They are also aware of the fact that in case, if the Arbitrator has not passed the award within the said period, the mandate of the Arbitrator shall get terminated unless it is extended by consent of the parties or by an order of the Court. Having knowledge about the said legal mandate, the respondents have not raised any objection with regard to non passing of the award and waited till an award was passed by the Sole Arbitrator on



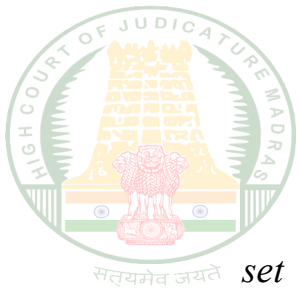
28.03.2018. Therefore, it could be concluded that the respondents have not only given their implied consent for passing of the award, but also they waived their rights to object to the passing of the award beyond a period of 12 months.

44.The Hon'ble Supreme Court in a judgment reported in **(2002) 3 SCC 175 (Inder Sain Mittal Vs.Housing Board, Haryana)** while considering the objection to the award on the ground that the Arbitrator did not have full qualification stipulated in the arbitration agreement, had proceeded to lay down the following proposition of law in paragraph Nos. 12 and 13 had held as follows:

“12.In view of the foregoing discussions, with reference to the provisions of the Act, we conclude thus:

(i) Grounds of objection under Section 30 of the Act to the reference made, with or without intervention of the Court, arbitration proceedings and the award can be classified into two categories, viz., one emanating from agreement and the other law.

(ii) In case the ground of attack flows from agreement between the parties which would undoubtedly be a lawful agreement, and the same is raised at the initial stage, Court may



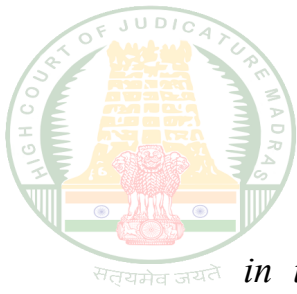
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set it right at the initial stage or even subsequently in case the party objecting has not participated in the proceedings or participated under protest. But if a party acquiesced to the invalidity by his conduct by participating in the proceedings and taking a chance therein cannot be allowed to turn round after the award goes against him and is estopped from challenging validity or otherwise of reference, arbitration proceedings and/or award inasmuch as right of such a party to take objection is defeated.

(iii) Where ground is based upon breach of mandatory provision of law, a party cannot be estopped from raising the same in his objection to the award even after he participated in the arbitration proceedings in view of the well settled maxim that there is no estoppel against statute.

(iv) If, however, basis for ground of attack is violation of such a provision of law which is not mandatory but directory and raised at the initial stage, the illegality, in appropriate case, may be set right, but in such an eventuality if a party participated in the proceedings without any protest, he would be precluded from raising the point in the objection after making of the award.

13. In the case on hand, it cannot be said that continuance of the proceedings and rendering of awards therein by the Arbitrator after his transfer was in disregard of any provision of law much less mandatory one but, at the highest, in breach of agreement. Therefore, by their conduct by participating



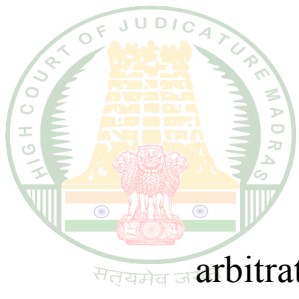
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in the arbitration proceedings without any protest the parties would be deemed to have waived their right to challenge validity of the proceedings and the awards, consequently, the objections taken to this effect did not merit any consideration and the High Court was not justified in allowing the same and setting aside the award.”

45. When Section 29-A of the Act is only construed to be a procedural one and discretion is given to the parties to extend the arbitration period for a further period of 6 months, this Court can very well arrive at a conclusion that the respondents herein by not raising any objection before passing of the award, have not only given their implied consent but also waived their rights to raise any objection with regard to the non passing of the award within a period of 12 months.

46. The objection relating to the invalidity of the award has been raised by the respondents only after they have suffered an adverse order. If such an interpretation is given to Section 29-A(4) of the Arbitration and Conciliation Act, the parties would resort to this argument after coming to know that they have suffered an adverse order. The legislative intent of inserting Section 29-A of the Act is only for expeditious disposal of the



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arbitration proceedings and not to confer a new defence upon an unsuccessful party to challenge the award and to reopen the entire proceedings.

47.A perusal of the order of the learned District Judge reveals that the order has been passed on the preliminary issue, without going into the merits of the case, solely based upon the fact that the award has not been passed within a period of 12 months.

(J). Conclusion:

48.In view of the above said deliberations, this Court passes the following orders:

(i)The award having been passed, within a period of 18 months from the date of entering upon the reference by the Sole Arbitrator, with the implied consent of the respondents after having waived their right to object, is valid in the eye of law.

(ii) C.M.P(MD).No.8135 of 2024 filed under Section 29-A(4) of the Arbitration and Conciliation Act, 1996 stands dismissed.



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(iii)The order of the Principal District Judge Judge,
Tiruneveli in Arbitration O.P.No.137 of 2018, dated
22.10.2019 is hereby set aside and the matter is remitted back
for fresh consideration on merits and in accordance with law
after giving opportunity to both the parties.

49.With the above said observations, this Civil Miscellaneous
Appeal stands allowed. No costs. Consequently, connected miscellaneous
petition is closed.

27.08.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



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To

1. The Principal District Judge,
Tirunelveli

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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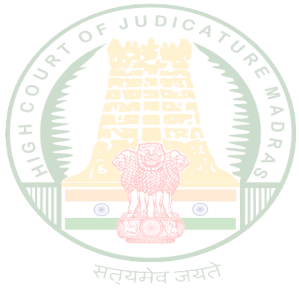
C.M.A(MD).No.108 of 2020

R.VIJAYAKUMAR, J

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Pre-delivery judgement made in
C.M.A.(MD).No.108 of 2020
and CMP(MD).Nos.1888 & 8135 of 2024

27.08.2024



C.M.A(MD).No.108 of 2020

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