

***Arb.Appeal(MD).No.58 of 2025***

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 25.03.2026

PRONOUNCED ON: 25.06.2026

CORAM

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

Arb.Appeal(MD).No.58 of 2025

G.Selvam

... Appellant/Respondent

Vs.

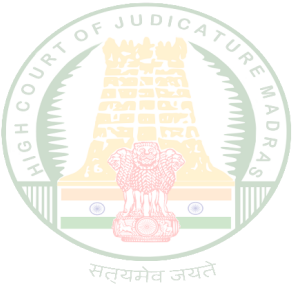
Union of India represented by,  
Executive Engineer,  
Madurai Central Division,  
Central PWD, Madurai.

... Respondent/Petitioner

**PRAYER:** Arbitration Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, to call further records in Ar.O.P.No.24 of 2013 on the file of the learned Principal District and Sessions Judge, Madurai, and set aside the order dated 29.01.2025 in respect of the claim no.1 in the arbitral award dated 04.02.2013 passed by the arbitrator under reference number ARB/R K/SZ-1/15/2013/368.

For Petitioner : Mr.S.Sukumar  
for M/s.APN Law Associates

For Respondent : Mr.K.Govindarajan  
Deputy Solicitor General of India



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**ORDER**

This appeal arises under Section 37 of the Arbitration and Conciliation Act of 1996. The claimant is the appellant.

2. For the sake of convenience, the parties will be referred to as per their ranks in the arbitration proceedings.

3. The following facts are not in dispute:

A contract was entered into between the claimant and the respondent on 15.07.2008. The purpose of the contract was for construction of the Kendriya Vidyalaya School building ("A" type) at Sivagangai. The tendered value of the contract was Rs.4,68,11,924/-. The contract was to commence on 22.07.2008. A period of 12 months (1 year) was granted for completion of the work, i.e., the work had to be completed on or before 21.07.2009. The actual date of completion of work was 30.11.2009. According to the claimant, he was entitled to a bonus on account of early completion, as contemplated under Clause 2A of the contract. The bonus was to be paid at the rate of 1% of the tendered value per month computed on per day basis. The maximum amount of bonus that can be granted was capped at 5% of the tendered value.

4. The claimant alleged that the respondent had not performed its core obligation of supplying materials and drawings and this prevented him from



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claiming bonus for early completion of the work. Hence, invoking the arbitration clause in the contract, he sought for resolution of the dispute by arbitration.

5. The Chief Engineer, South Zone-I, Chennai, by a letter dated 28.04.2011, appointed a Sole Arbitrator. The said Arbitrator resigned his appointment on 23.05.2011. Subsequently, by a letter dated 29.07.2011, another Arbitrator was appointed to start the proceedings from the stage at which the first arbitrator had left. The fresh arbitrator entered upon reference on 17.08.2011.

6. 11 heads of claims were made by the claimant. He marked Ex.C1 to Ex.C40. The respondent filed a counter statement. The Arbitrator received written submissions from both parties. By an award dated 04.02.2013, he directed the respondent to pay the claimant a sum of Rs.20,51,391/- together with simple interest at the rate of 10% per annum on the awarded sum. The interest was to run from the date of invocation of arbitration, i.e., 24.04.2011, till the date of payment.

7. Aggrieved by the same, the respondent preferred a petition under Section 34(2) of the Arbitration and Conciliation Act. The learned Principal District Judge at Madurai received this petition as Arbitration O.P.No.24 of 2013. By an order dated 29.01.2025, he confirmed the award regarding

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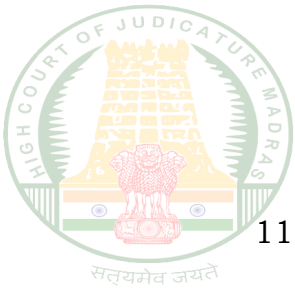
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Claim Nos.2 to 11. He partly allowed the petition and set aside the award insofar as Claim No.1 alone is concerned.

8. Aggrieved by the same, the claimant is on appeal. The respondent has not chosen to challenge the dismissal of Arbitration O.P.No.24 of 2013 with respect to Claim Nos.2 to 11. Hence, the scope of this appeal is extremely limited. This Court has to consider whether the setting aside of the award, insofar as Claim No.1 is concerned, is justified.

9. Heard Mr.S.Sukumar for M/s.APN Law Associates for the appellant and Mr.K.Govindarajan, learned Deputy Solicitor General of India for the respondent.

10. Claim No.1 relates to the clause of claiming bonus as referred above. According to the claimant, it mobilized men and materials to achieve the contract within the specified period of 12 months. However, on account of failure to supply the necessary materials like cement, steel and structural drawings by the respondent, the claimant could not complete the work on time. The claimant stated, had there been no hindrance to the work, he would have completed the work in advance and would have been eligible to the maximum bonus of 5%. According to the claimant, he would be entitled to a sum of Rs.23,40,596/-.



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11. Per contra, the respondent had submitted before the Arbitrator that the architectural drawings depicting the plan, section, elevation and specifications were made available much before the tendering of the work. The structural drawings for the foundation and superstructure had been given at several stages as the work progressed. It urged that the claimant had been called upon to accelerate the work by a letter dated 06.04.2009. Though the claimant had justified the delay of 234 days and sought for extension, the respondent had only recommended 182 days. The actual delay in completion being 101 days, the respondent stated the delay on account of supply of cement and steel was only 74 days.

12. In the rejoinder, the claimant had urged that only if the respondent had provided materials, structural drawings and decision as a first sequence, he could have performed his duties in the next sequence.

13. On consideration of the written submissions made by both the parties, the Arbitrator came to a conclusion that the claimant would have completed the work ahead of time, had the drawings and materials been supplied to him in time. The actual delay was 132 days and the justified delay was 234 days. He concluded that had there not been a delay on the part of the respondent in supplying the plans and materials, the work would have been completed 102 days in advance. He referred to the calculation given by the respondent to come to a conclusion that even as per the case of



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the respondent, the work could have been completed 81 days in advance and that the claimant would be entitled to earn a bonus of 2.67% of the tendered amount. The Arbitrator, on the basis of this analysis, concluded that the work would have been completed 92 days ahead of the stipulated date of completion, had the respondent not breached the contract and thus, granted a bonus of 3%. He allowed the claim to an extent of Rs.14,04,358/-.

14. In the petition filed under Section 34, the learned Principal District Judge, Madurai, held that the conclusion of the Arbitrator is only hypothetical and assumption without any concrete or documentary evidence. He held that even though the material was supplied with delay and one month's time was extended, the claimant had completed the work with a delay of 101 days. On this basis, he set aside that portion of the award.

15. The following facts are not in dispute:

The period of contract is between 22.07.2008 and 21.07.2009. The site itself was not handed over to the claimant as stated in the contract. It was handed over to him only on 22.08.2008. The contract had to be completed on or before 21.08.2009. A perusal of Ex.C6 shows that the work started on 22.08.2008 and was completed on 30.11.2009. Ex.C6 also holds that the justified hindrance worked out to 182 days. Ex.C6 justifies the



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extension of time of 101 days from 22.08.2009 to 30.11.2009 and recommended for sanction without levy of compensation.

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16. The statement appended to Ex.C5 points out that the work was hindered on account of the following circumstances:

(i) Structural drawings had not been issued by the Department for casting of roof slab for left and right blocks

(ii) Delay in non-supply of cement by the Department

(iii) Casting terrace slab for the right block was affected for want of 12mm steel rods

(iv) Delay due to issue of structural drawings for water tanks, head room and lift room

(v) Delay in finalizing the thickness of bottom slab for water tank

(vi) Delay in issue of colour scheme by the Department.

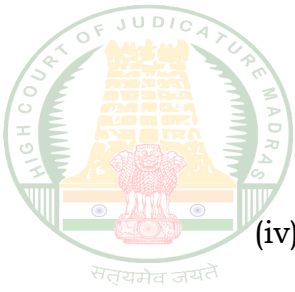
17. Response to this detailed calculation given by the Executive Engineer MCDI, CPWD, Madurai, points out the following:

(i) Delay due to non-issuance of cement by the Department from 22.08.2008 to 30.08.2008 – 9 days

(ii) Delay due to non-supply of cement by the Department between 13.12.2008 and 29.01.2009 – 24 days

(iii) Structural drawings not issued by the Department for the roof slab from 01.10.2008 to 16.10.2008 – 16 days

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(iv) Delay due to non-supply of cement by the Department from 11.01.2009 to 12.02.2009 – 33 days

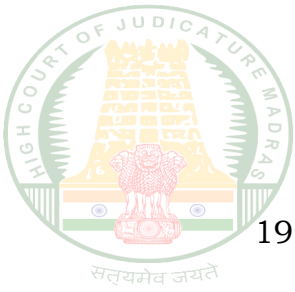
(v) Delay due to non-issuance of structural drawings for the water tanks and roof slab from 25.03.2009 to 06.04.2009 – 7 days

(vi) Non-supply of structural drawings for roof slab – 7 days

(vii) Delay due to non-supply of cement by the respondent from 10.04.2009 to 12.04.2009 and 20.04.2009 to 24.04.2009 – 8 days

(viii) Delay in issuance of colour scheme though 52 days, considering the overlapping period, 5 days was granted.

18. The Executive Engineer of the respondent himself conceded that the hindrance on account of non-supply of cement, steel, structural drawings and colour scheme worked out to 182 days. The actual work had been completed within 101 days. It is on the basis of the reading of Ex.C5 that the Arbitrator concluded that the claimant would have completed the work in 92 days out of the 182 days granted. It was not a hypothetical conclusion as concluded by the learned Principal District Judge. In order to arrive at the conclusion, he referred to page no.4 of CSF as well as Ex.C6. Hence, the conclusion arrived at by the learned Principal District Judge that it is a hypothetical conclusion and therefore, requires interference, shows non-application of mind by the learned Principal District Judge.

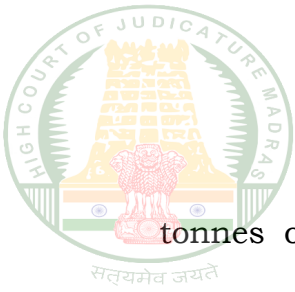


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19. Furthermore, an application under Section 34 of the Arbitration and Conciliation Act is not in the nature of an appeal. The section limits the scope and judicial intervention. The jurisdiction that a court exercises is purely supervisory and not appellate. A court, under Section 34, is not entitled to re-examine the merits of the case or re-appreciate the evidence. If the Arbitrator's view is a plausible “interpretation of a contract”, a court under Section 34 should not interfere with the same, even if it believes, a better view exists. It is trite that the arbitrators are the ultimate masters of contractual interpretation. An arbitrator may adopt an “honest guesswork” or a rough-and-ready methodology in engineering contracts where precise quantification is difficult. When the delay on the part of the respondent stands proved by virtue of Ex.C5 and Ex.C6, the learned Appellate Judge erred in interference with the same.

20. I would further refer to the typed set of papers filed by the learned Deputy Solicitor General at Page No.2. He has enclosed the letter dated 13.02.2009. This letter shows that the claimant had written two letters on 21.01.2009 and 07.02.2009, drawing the attention of the respondent that the work was being delayed due to non-issuance of structural drawings, cement and steel by the Department. The letter also states that the matter was discussed by the Executive Engineer with the Superintending Engineer, MDUCC, CPWD, Madurai and thereafter, a decision was taken by the respondent that the claimant himself be permitted to purchase 60 metric

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tonnes of cement immediately so as to cast the roof slab of the school building and quarters slab. To a similar effect is the letter dated 15.04.2009 at Page No.5 of the respondent's typed set. All this points out, the delay occurred due to the late supply of necessary details and materials by the respondent. Hence, I am of the view that the learned Principal District Judge came to an erroneous conclusion that the award of the Arbitrator is hypothetical. On the contrary, the award has been based on the materials available before the Arbitrator.

21. The view taken by the learned Judge under Section 34 is not in line with the view of several judgments of the Supreme Court, in particular,

(i) **Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49** (paragraphs 28, 35 and 38 to 40)

(ii) **Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131** (paragraph 76)

(iii) **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1** (paragraphs 34 and 35).

I should point out that the view taken by the Supreme Court in the aforesaid judgments found acceptance at the hands of a Constitution Bench in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1.**

22. In the light of the above discussions, the Arbitration Appeal is **allowed**. The order passed by the learned Principal District Judge, Madurai,

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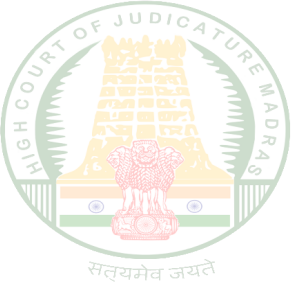
in Arbitration O.P.No.24 of 2013 dated 29.01.2025 stands set aside. The appellant will be entitled to the amounts awarded by the Arbitrator with respect to Claim No.1. The appellant will also be entitled to the costs in this appeal.

**25.06.2026**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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To

- 1.The Principal District and Sessions Court,  
Madurai.
- 2.The Executive Engineer,  
Union of India,  
Madurai Central Division,  
Central PWD, Madurai.



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**V.LAKSHMINARAYANAN,J.**

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