In the Court of the Principal District Judge, Madurai
Present: Thiru. S. Sivakadatcham, B.Sc.,M.L.,
Principal District Judge, Madurai
Friday, this the 10th day of April, 2026
Arbitration O.P.No.332/2022
(CNR No.TNMD01-001856-2022)

Senior Divisional Engineer/
Central Divisional Railway Manager Office,
Southern Railway,Madurai
Represented by Union of India .. Petitioner

/vs/

G. Selvam .. Respondent

This petition is coming on 18.02.2026 for final hearing before me, in the presence of Thiru.S.Kandasamy, Advocate for the petitioner and of Thiru. G.Ramapandian, Advocate for the respondent and upon hearing the arguments of both sides and upon perusing the material records, this Court has passed the following:-

ORDER

This petition is filed u/s.34(2) of the Arbitration and Conciliation Act, 1996, to set aside the counter claim of the Award of the Sole Arbitrator dated 13.03.2021 made in relation to disputes arising out of Agreement No.MDU/64/2015 dated 11.02.2015.

2. The brief facts of the Case are as follows:

As per Claim No.4: the staff salary and the over heads are not covered under the agreement for any other extent law and hence the staff salary and over heads are not admissible and interest is also not admissible as per the clause 64(5) of General condition of contract. As per Railway counter claim: The vitiation clause is incorporated in the agreement under the special condition of Contract, there is a section under clause No.8 deals with vitiation in quantities in Work contract. As per the Special Condition of contract, the vitiation if any arising due to variation of quantities during the execution of work, the vitiation amount should be deducted from the final bills of the contractors. As per the approved practice of deduction of vitiation, an amount of Rs.7,31,000/- to be deducted from the contractor/claimant under Agreement No. MDU/64/2015 dt. 11.02.2015. During the proceedings of arbitration hearings, the respondent submitted the defence statement of Railway counter claims and explained before the Hon'ble Sole Arbitrator to accept the above statements. But the sole arbitrator not considered vitiation amount fully and awarded half amount for Rs.3,65,500/- instead of Rs.7,31,000/-, which is considered financial loss to the railway department owned by the Government of India. (ii) Clause-16(3) stipulates that no interest will be payable upon the earnest money and security deposit or amount payable to the contractor under the contract but the Government securities deposited in terms of the Sub-Clause (I) of the clause will be payable with interest accrued thereon. (iii) Clause -64(5) of the General Condition of Contract stipulates that where the arbitral award is being payment of money, no interest shall be payable on whole or in part of the money for any period till the date on which the award is made. (iv) Section 31(7)(a) of the Arbitration and Conciliation Act stipulates that the Honourable Arbitral Tribunal is empowered to award interest unless otherwise agreed by the parties for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. In the present case, there being an agreement to the contrary between the parties, the award of the Honourable Tribunal granting pendent-lite interest to the respondent is not legally sustainable. Further payment of interest pendent-lite has been clearly settled by the Suprement Court in (2016)6 SCC 36 and the Honourable Court have held that if the contract expressly bars the award of interest pendent lite, the same cannot be awarded by the arbitrator. (v) The Department the salaries and overheads will not fall within the ambit of agreetment.(vi) It is seen that Sole Arbitrator has passed an award without considering that Vitiation under Special Conditions of Contract and are not arbitrable as per General Conditions of Contract.

3. The averments set out in the counter affidavit filed by the respondent are briefly stated as follows:-

The respondent/claimant is a contractor was awarded the work of the proposed repairs to road surface of manned and unmanned LCs between Kodaikanal Road – Madurai (Dn Line) and Madurai and Tiruppachetti section to Sr.Section Engineer/Permanent way / Metre Gauge / Madurai under Agreement No. MDU/64/2015 dated 11.02.2015. The General Manager Southern Railway, Chennai has appointed Sri.M.Satheesh as Sole Arbitrator. The respondent/claimant Sri.G.Selvam has preferred and submitted the following Claims before the Sole Arbitrator. 1) Final Bill Amount for Rs.4,01,527/-, 2) Earnest Money Deposit ofr Rs.98,402/-, 3) Security Deposit for Rs.1,84,319/-, 4) Other Finance Charges sand over heads for Rs.6,65,734/-. This petitioners has also submitted the defence statement to the above claims preferred by the claimant. In their defence the petitioner department did not dispute the claims of the respondent/claimant. On ther other hand they submitted the Counter Claim of Vitiation amount for Rs.7,31,000/- which was to be paid to the Railways by the claimant as per the special condition of contract under the MDU/64/2015 dated 11.02.2015. After hearing both sides, the Arbitrator passed award on 25.02.2021 which was published on 13.03.2021. In the said award it was awarded as follows:-

Claim no.	Claim amount	Award amount
1.	Rs.4,01,527/-	Rs.4,01,527/-
2.	Rs.98,420/-	Rs.98,420/-
3.	Rs.1,84,319/-	Rs.1,84,319/-

4.	Rs.6,65,734/-	Rs.45,000/-
Total	Rs.13,50,000/-	Rs.7,29,266/-

For the counter claim towards vitiation made by the petitioner for Rs.7,31,000/-, half of the claim amount of Rs.3,65,500/- was awarded by the arbitrator. Thus the net ward amount awarded to the respondent/claimant is Rs.3,63,766/- after deducting the award for their counter claim. There are catena of judgments of our Honourable Apex and High Court, that Section 34 of Arbitration and Conciliation Act 1996, has a narrow scope that is the grounds on which the award can be set aside is limited. Infact, the legislative is to maintain and preserve the sanctity of the Arbitration proceedings and restrict judicial interference in the same. Under these circumstances, the claim of the petitioner to set aside the award on the ground that their claim of vitiation amount is not fully awarded and that the Arbitration Tribunal awarded only half of the amount, is not sustainable under Section 34 of the Act. Infact, the Arbitrator, in his award, has concluded in respect of their counter claim only in favour of the petitioner by concluding that the petitioner is not at fault in charging vitiation to the contractor, due to the existence of the provision in the Agreement. But it has rightly decided that the department has created an impression that the payments will be based on scheduled rates only i.e. without taking vitiation into account and there is likelihood and that the contractor has executed the variations taking this aspect into consideration. In such circumstances, the Arbitration Tribunal has considered that it will be against natural justice to charge the entire vitiation to the Claimant/contractors account. Thus there is no violation of Principal of Natural account. Thurs there is no violation of Principle of Natural justice in awarding half of the amount towards the counter claim of the petitioner/department. Under these circumstances, this petition to set aside the award on the ground is not at all maintainable either in law or on facts. The arbitration tribunal has awarded that the amount due to the claimant may be paid by the Department without any interest in 60 days from the date on which the award document is published by the Arbitration Tribunal. A simple interest of 8% Per Annum form the date after the expiry of the 60 days is payable to the claimant if the award amount is paid after the expiry of 60 days. Thus the arbitrator has awarded a meager interest only in case of default of settlement of the awarded amount, that too, by giving sufficient time of 60 days for payment of the awarded amount. It is settled Principal of Law of our Honourable Apex Court held in **2023 INSC 708,** "*Section 31(7)(b) of the 1996 Act, was amended by Act 3 of 2016, w.e.f. 23.10.2015. The pre-amended provision, empowers the arbitrator to award both pre-award and post – award interest and specifies that the awarded sum would carry an interest of 18% per annum, unless provided otherwise, from the date of award till the date of payment.*" The whole object of the Arbitration and Conciliation Act is for the speedy settlement of claims of the claimant. But the respondent has been made to run pillar to post to get his awarded amount by the petitioner/department with vexatious, unsustainable proceedings that too after the respondent/claimant has initiated Execution proceedings in E.P.No.9/2022 which is pending on the file of I Additional District Judge, Madurai to recover the awarded amount against the petitioner/Department. This respondent reserves his right to file an additional counter if necessary. This petition is hopelessly barred by limitation. This petition is not maintainable either in law or on facts. Hence prayed to dismiss the petition.

4) Both sides have not adduced oral evidence and documentary evidence.

5) Heard both side.

<u>6. The points for determination:</u>

Whether the counter claim of the Award passed by the Sole Arbitrator dated 13.03.2021 made in relation to disputes arising out of Agreement No.MDU/64/2015 dated 11.02.2015 is liable to be set aside.

7. Point :-

The learned petitioner's counsel advanced arguments that according to so far as claim is concerned as per the clause 64(5) of GCC, no interest shall be payable on the award money till the date of award and also argued that clause 16(2) of the GCC, which expressly prohibits the grant of interest on any amount payable to the contractor and also draw the citation of the Hon'ble Supreme Court in Civil Appeal No. 6592 of 2021 dated 18.11.2021. It is further argued that according to Section 31(7)(a) of the Arbitration and Conciliation Act, tribunal is empowered to award interest unless otherwise agreed by the parties for the whole or any part of the period between them. So the award of interest by the tribunal is unacceptable. In the vitiation claim amount is not properly appreciated by the learned Arbitrator.

8. On the other hand, the learned respondent counsel in his argument submitted that vitiation amount is nbot fully awarded and the learned Arbitrator has awarded the 1/2 of the claim amount. It is further argued that the learned Arbitrator has considered the nature justice and awarding 1/2 of the amount towards the counter claim of the department. It is further contended that the accoring to Section 31(7)(b) of the Arbitration and Conciliation Act, empowers the Arbitrator to award both award and interest and satisfied that the award sum would carry interest of 18% per annum unless provided otherwise from the date of award till the date of pament and draw the attention of the court to the Citation 2023 INSC 708.

9. Records perused. The respondent/Claimant is a contractor, the work was allocated and the work of proposed repairs to road surface of manned and unmanned LCs between Kodaikanal Road – Madurai (Dn line) and Madurai and Tiruppachetti Section to Sr. Section Engineer / Permanent way /Metre

Gauge / Madurai under the Agreement No.MDU/64/2015 dt. 11.02.2015. After the completion of the work, there is dispute. So the contractor requested for refer the matter for arbitration adjudication arising out of agreement clause. In pursuance of it, the General Manager, Southern Railway, Chennai has appointed the Arbitrator. The respondent filed a claim for following heads:

1. Final Bill amount for Rs.4,01,527/-
2. Earnest Money Deposit for Rs.98,402/-
3. Security Deposit for Rs.1,84,319/-
4. Other Finance Charges sand over heads for Rs.6,65,734/-.

The deparment submitted the Counter Claim of Vitiation amount of Rs.7,31,000/-. After hearing both sides, the learned Arbitrator has passed the award on 25.02.2021 as follows:

Claim No.	Claim Amount	Award Amount
1	Rs.4,01,527/-	Rs.4,01,527/-
2	Rs.98,420/-	Rs.98,420/-
3	Rs.1,84,319/-	Rs.1,84,319/-
4	Rs.6,65,734/-	Rs.45,000/-
Total	Rs.13,50,000/-	Rs.7,29,266/-

Towards the counter claim amount the learned Arbitrator has passed 1/2 of counter claim amount i.e. Rs.3,65,000/- was awarded. After deducting the amount awarded under the counterclaim, the net amount payable to the respondent is Rs.3,63,766/-. Being aggrieved, the respondent has preferred this appeal in following grounds:

<u>Claim No.4:</u> the staff salary and the over heads are not covered under the agreement for any other extent law and hence the staff salary and over heads are not admissible and interest is also not admissible as per the clause 64(5) of General condition of contract.

Railway counter claim: The vitiation clause is incorporated in the agreement under the special condition of Contract, there is a section under clause No.8 deals with vitiation in quantities in Work contract. As per the Special Condition of contract, the vitiation if any arising due to variation of quantities during the execution of work, the vitiation amount should be deducted from the final bills of the contractors. As per the approved practice of deduction of vitiation, an amount of Rs.7,31,000/- to be deducted from the contractor/claimant under Agreement No. MDU/64/2015 dt. 11.02.2015. During the proceedings of arbitration hearings, the respondent submitted the defence statement of Railway counter claims and explained before the Hon'ble Sole Arbitrator to accept the above statements. But the sole arbitrator not considered vitiation amount fully and awarded half amount for Rs.3,65,500/- instead of Rs.7,31,000/-, which is considered financial loss to the railway department owned by the Government of India.

(ii) Clause-16(3) stipulates that no interest will be payable upon the earnest money and security deposit or amount payable to the contractor under the contract but the Government securities deposited in terms of the Sub-Clause (I) of the clause will be payable with interest accrued thereon.

(iii) Clause -64(5) of the General Condition of Contract stipulates that where the arbitral award is being payment of money, no interest shall be payable on whole or in part of the money for any period till the date on which the award is made.

(iv) Section 31(7)(a) of the Arbitration and Conciliation Act stipulates that the Honourable Arbitral Tribunal is empowered to award interest unless otherwise agreed by the parties for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. In the present case, there being an agreement to the contrary between the parties, the award of the Honourable Tribunal granting pendent-lite interest to the respondent is not legally sustainable.

Further payment of interest pendent-lite has been clearly settled by the Suprement Court in (2016) 6 SCC 36 and the Honourable Court have held that if the contract expressly bars the award of interest pendent lite, the same cannot be awarded by the arbitrators.

(v) The Department the salaries and overheads will not fall within the ambit of agreetment.

(vi) It is seen that Sole Arbitrator has passed an award without considering that Vitiation under Special Conditions of Contract and are not arbitrable as per General Conditions of Contract.

10. It is a settled proportion of law that the scope of interference by the appellate court is very narrow in arbitration awards; the appellate court does not reappreciate the evidence or act as a trial court. Its interference is limited to the grounds prescribed under Section 34 of the Arbitration and Conciliation Act. It is elaborately held by Hon'ble High Court in 2024(6) CTC 225. On perusal of grounds of appeal, though dispute with regard to the respondent has accepted the Claim No.1: Final Bill amount Rs.4,01,527/-, Claim No.2: Earnest Money Deposit for Rs.98,420/- Claim No.3: Securiy Deposit for Rs.1,84,319/- for the total of Rs.6,84,266/- and Claim No.4: Other finance charges and over head for Rs.45,000/- and the railway counter claim for Rs.3,65,500/- instead of Rs.7,31,000/- is not accepted and raised the objection. The main grounds to set aside the Arbitrator award in respect of claim no.4 is staff salary and the over heads are not covered under the agreement for any other extent law and the interest is also not admissible as per the clause 64/(5) of General Condition of contract. So far as this claim is concerned, it is settled proportion of law that the appellate court cannot reappreciate the evidence but **Section 34(3) of the Arbitration and Conciliation Act**, stated that

"*An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficinet cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.*"

11. So far as interest is concerned the learned Arbitrator has elaborately discussed the claim amount under the head of other finance charges and over heads of Rs.6,65,734/-. It is stated that the work has been completed on 22.11.2017, the final bill was preparated by 15.05.2018, that the communication that the entire vitiation against final work is proposed to be charged to the claimant, was issued only on 02.08.2019 and that after the claimnat sent letters to the GM to fix arbitration as his payments were badly delayed. So the claim of claimant towards staff salary, towards office office over heads, towards over heads towards bankers interest, the learned Arbitrator elaboratedly discussed and awarded only Rs.45,000/-, which is well reasonable and found no irregularity. It is also observed that as there were unreasonable delay in part of the department in conveying its decision on the issue of vitiation. Therefore, the claimant is justified in claiming the amount incurred by him. This Court finds no irregularity or violation of public policy, and hence there is no warrant for interference.

12. Counter claim is concerned, the department has claimed vitiation amount of Rs.7,31,000/-. But the tribunal has awarded 1/2 of the claim amount. During the course of argument, it is contended that the petitioner counsel

mainly focused its imposing of interest which is against 31(7) of the Arbitration and Conciliation Act, particularly, the future interest at the rate of 8%. On perusal of award, the petitioner/respondent is directed to pay the amount of Rs.3,63,766/-to the claimant without any interest in 60 days from the date on which the award document is published by the Arbitration Tribunal and a simple interest of 8% per annum from the date after the expiry of 60 days is payable to the claimant if the award amount is paid after the expiry of 60 days. Award was passed on 25.02.2021 and the same was published on 13.03.2021. As per the award 60 days time was granted to the department to pay the award amount if not they are liable to pay 8% per annum after expiry of 60 days. On perusal of **Section 31(7) of the Arbitration and Conciliation Act,** it is stated that:

"*(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

This clearly shows that pre award interest can be awarded by the Arbitration Tribunal if there is agreement between the parties. But there is no bar in the Arbitration Tribunal to pass award in post award period till realization. Further, the learned counsel for the respondent draw the attention of the Court to the decision reported in **CDJ 2023 SC 757, in the case of *M/s. Larsen Air Conditioning & Refrigeration Company v. Union of India & Others***, wherein it was held that:

"*The arbitration tribunal has awarded that the amount due to the* *claimant may be paid by the Department without any interest in 60 days from the date on which the award document is published by the Arbitration Tribunal. A simple interest of 8% Per Annum from the date after the expiry of the 60 days is payble to the claimant if the award amount is paid after the expiry of 60 days. Thus, the arbitrator has awarded a meagre interest only in case of default of settlement of the awarded amount, that too, by giving sufficinet time of 60 days for payment of the awarded amount".*

The tribunal has passed the interest 8% only which is exaggerative. So this court does not find any irregularities or against the public policy and does not require any warrant of interference. The point is answered accordingly.

In the result, this petition is dismissed and the Arbitration Award dated 13.03.2021 passed by the Arbitrator in relation to dispute arising out of Agreement No.MDU/64/2015 dated 11.02.2015 is confirmed. No cost.

Dictated to the stenographer, transcribed and computerized by him, corrected and pronounced by me in open court this the 10th day of April, 2026.

SELVARAJAN SIVAKADATCHAM

Digitally signed by SELVARAJAN SIVAKADATCHAM
Date: 2026.05.06 17:26:07 +0530

Principal District Judge,
Madurai.

<u>List of witnesses and documents on the both side:- Nil</u>

SELVARAJAN SIVAKADATCHAM

Digitally signed by SELVARAJAN SIVAKADATCHAM
Date: 2026.05.06 17:26:13 +0530

Principal District Judge,
Madurai.