

ITEM NO.107

COURT NO.4

SECTION XIIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 159-170/2010

K.MARAPPAN (DEAD) THROUGH SOLE LR.

Appellant(s)

VERSUS

SUPERINTENDING ENG.T.B.P.H.L.C.

Respondent(s)

(with appln. (s) for permission to place addl. documents on record and office report)

Date : 20/10/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. K. Ramamoorthy, Sr. Adv.  
Mrs. Revathy Raghavan, Adv.

For Respondent(s) Mr. Guru Krishna Kumar, Sr. Adv.  
Mr. Guntur Prabhakar, Adv.  
Ms. Prerna Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Mr. K. Ramamoorthy, learned senior counsel appearing for the appellant submitted that the High Court has fallen into grave error in its interpretation of clause 59 of the agreement. The said clause reads as under:

"59. Delays and extension of time: No claim for compensation on account of delays or hindrances to the work from any cause whatever shall lie, except, as hereinafter defined. Reasonable extension of time will be allowed by the executive Engineer or by the officer competent to sanction the extension for unavoidable delays, such as may result from

causes, which, in the opinion of the Executive Engineer, are undoubtedly beyond the control of the contractor. The Executive Engineer shall assess the period of delay or hindrance caused by any written instructions issued by him, at twenty five per cent in excess of the actual working period so lost.

In the event of the Executive Engineer failing to issue necessary instructions and thereby causing delay and hindrance to the contractor, the latter shall have the right to claim an assessment of such delay by the Superintending Engineer of the Circle whose decision will be final and binding. The contractor shall lodge in writing with the Executive Engineer a statement of claim for any delay or hindrance referred to above, within fourteen days from its commencement, otherwise no extension of time will be allowed.

Whenever authorised alterations or additions made during the progress of the work are of such a nature in the opinion of the Executive Engineer as to justify an extension of time in consequence thereof, such extension will be granted in writing by the Executive Engineer or other competent authority when ordering such alterations or additions."

Elaborating the stipulation in the agreement it is urged by him that time was extended by the authorities and further the Executive Engineer, Superintendent Engineer and the Chief Engineer had recommended for extension of time as there was delay on the part of the department. That apart submits Mr. Ramamoorthy that

there was recommendation for enhancement of rate because of escalation, causing due to delay. According to Mr. Ramamoorthy, the arbitrator has passed an award by analyzing clause 59 in the factual matrix and the rule making court has appreciated that and given the stamp of approval to almost all the claims passed by the Arbitrator. The High Court, as put forth by Mr. Ramamoorthy, has been guided totally by clause 59 without adverting to the facts and the law in the field.

Mr. Guru Krishna Kumar, learned senior counsel appearing for the respondent would submit that once clause 59 comes into operation, all the claims have to be negatived. The said legal position is not disputed by Mr. Ramamoorthy. However, the question remains whether in the factual matrix clause 59 is attracted or not.

Mr. Guru Krishna Kumar, learned senior counsel for the respondent has commanded us to a three-judge Bench decision in Ch. Ramalinga Reddy vs. Superintending Engineer and Another reported in 1999 (9) SCC 610. He has drawn inspiration from paragraph 17. The relevant part of the said paragraph reads as below:

"17. Claim 8 was for "payment of extra rates for work done beyond agreement time at schedule of rate prevailing at the time of execution",. The arbitrator awarded the sum of Rs.39,540. Clause 59 of the A.P. Standard Specifications, which applied to the contract between the parties, stated that no claim for compensation on account of delays or hindrances to the work from any cause would lie except as therein defined. The claim falls outside the defined exceptions. When extensions of time

were granted to the appellant to complete the work, the respondents made it clear that no claim for compensation would lie. On both counts, therefore, Claim 8 was impermissible and the High Court was right in so holding."

On a plain reading of the said paragraph as it seems to us if there is a delay for some hindrance, the claimant contractor would not be entitled to any claim, but the said clause is not absolute in its terms, it carves out exceptions. As submitted by Mr. Ramamoorthy, two exceptions have been satisfied by the claimants and that has been taken into consideration by the arbitrator as well as the rule making court. The High Court has not appreciated the factual score in an apposite manner.

In the course of hearing, we are apprised that the award has been passed in the year 1988. The Arbitrator has accepted 21 claims out of 27 claims in respect of 3 contracts/agreements and the amount would approximately would comes to Rs.3,00,00,000/- (Rupees Three Crores). Mr. Ramamoorthy would submit that the appellant would be satisfied at this stage regard being had to the division of the State on the basis of the Re-organisation Act 2014 to accept the principal amount or even something less than the same. On a further suggestion, Mr. Ramamoorthy submitted that he would not hesitate if 2.35 crores (Rupees two crores thirty five lakhs) is given to the appellant whereby 65 lakhs is reduced from the principal amount but it should be paid within a stipulated time.

Needless to say whatever we have stated hereinabove is without

prejudice to the contentions to be raised by learned counsel for both sides Mr. Guru Krishna Kumar, learned senior counsel assisted by Mr. Guntur Prabhakar, learned counsel for the respondent shall obtain instructions within four weeks hence.

Matter be listed on 7<sup>th</sup> December, 2016 for further hearing.

[O.P. SHARMA]  
AR-CUM-PS

[H.S. PARASHER]  
COURT MASTER