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Arb.O.P.(Com.Div.)No.157 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

**Arb.O.P.(Com.Div.)No.157 of 2022**

M/s.Color Home Developers Pvt. Ltd.,  
Rep. by its Managing Director D.Ramesh  
No.37, 6th Street, A Block  
Anna Nagar (East), Chennai-600 102.

... Petitioner

vs.

M/s.Color Castle Owners Society  
Rep. by its Secretary Mr.Murugesan  
Nookampalayam, Kamrajar Street  
Perumbakkam, Chennai-600 100.

... Respondent

Original Petition filed under Section 34(2)(a) IV and V of the  
Arbitration and Conciliation Act, 1996 praying to

(a) Set aside the Arbitral Award dated 29.07.2021 in A.F.No.208 of 2019  
on the file of sole Arbitrator Mr.S.Rajasekar, Advocate;

(b) Direct the respondent to pay the costs;

For Petitioner : Mr.V.Manohar

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## **ORDER**

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 29.10.2021 assailing an 'arbitral award dated 29.07.2021 bearing reference No.A.F.No.208 of 2019' [hereinafter 'impugned award' for the sake of convenience and clarity].

2. Short facts shorn of elaboration will suffice as this is a Section 34 legal drill under 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', [hereinafter referred to as 'A and C Act' for the sake of brevity]. To be noted, there will be a little elaboration on this legal drill under Section 34 elsewhere infra in this order.

3. Be that as it may, short facts shorn of elaboration are that the *lis* is between Developer/Builder who put up/constructed about 100 residential apartments in a project which was named 'Color Castle' [hereinafter 'said project' for the sake of convenience and clarity]; that this Court is informed that these 100 odd apartments in said project are in 11 blocks of 8 apartments and 3 blocks of 4 apartments each; that the residential apartments were



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constructed and handed over to the respective home buyers is not in  
disputation; that the home buyers of these 100 odd apartments formed a  
Society in the name and style 'Color Castle Owner's Society' [hereinafter  
'said owner's Association' for the sake of convenience and clarity]; that this  
Court is informed that said owner's Association is registered under Tamil  
Nadu Societies Registration Act, 1975; that post completion of construction  
and handing over of the same, certain disputes arose between said owner's  
Association and 'petitioner-Company' [hereinafter 'builder' for the sake of  
convenience and clarity]; that disputes largely pertain to certain defects in the  
construction; that there were other incidental and collateral issues such as  
refund of corpus fund; that contending that there is an arbitration clause in  
the construction agreement dated 15.03.2014, said owner's Association  
approached this Court under Section 11(6) of A and C Act and this Court in  
and by an order dated 17.09.2019 in O.P.No.554 of 2019 appointed a learned  
member of the Bar of this Court as sole arbitrator to enter upon reference qua  
arbitration and render an award in accordance with Madras High Court  
Arbitration Proceedings Rules, 2017; that sole arbitrator entered upon  
reference and made the impugned award; that before sole arbitrator, said  
owner's Association as claimant made claims under as many as 16 heads of



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claims; that vide the impugned award 10 heads of claims were allowed but 6 heads of claims were rejected; that sole arbitrator appointed a qualified civil engineer, made an assessment of construction and took the report into account in making the impugned award; that the builder has now come up with the captioned Arb OP assailing the impugned award.

4. Before proceeding further, this Court deems it appropriate to extract and reproduce the following:

(a) Order of this Court dated 17.09.2019 made in O.P.No.554 of 2019 (appointing sole arbitrator);

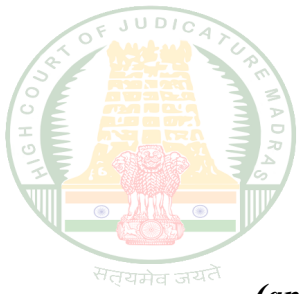
(b) 16 heads of claims as culled out from the claim statement;

(c) Issues framed by Arbitral Tribunal [AT];

(d) Operative portion of the impugned award wherein 10 heads of claims have been allowed;

5. Reproduction of aforementioned four facets of the matter on hand are as follows:

**a) Order of this Court dated 17.09.2019 made in O.P.No.554 of 2019.**



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**(appointing sole arbitrator)**

*'This Original Petition is filed seeking for the appointment of a Sole Arbitrator to decide the disputes that have arisen between the petitioner and the respondent under the Construction Agreement dated 15.03.2014.*

*2. According to the petitioner, it is a registered Society under the provisions of the Tamil Nadu Societies Registration Act read with the Tamil Nadu Apartment Ownership Act, 1994 and its members, numbering 92, are the purchasers of the flats developed by the respondent after entering into individual Construction Agreements. As per the said agreements, the respondent has duty bound to do maintenance for one year, which came to an end during September 2017, and thereafter it has to handover the corpus fund, which the respondent collected at the rate of Rs.20,000/- from each apartment, to the petitioner society. Thus, the respondent is liable to pay a sum of Rs.20,00,000/- (Rupees twenty lakhs only) to the petitioner. However, the respondent, while admitting the said liability, requested the petitioner to permit it to pay the due amount in 18 equal monthly installments of Rs.1,00,000/-, i.e., Rs.18,00,000/- for which, the petitioner also expressed consent to avoid any litigation. However, the respondent only paid a sum of Rs.2,00,000/- (Rupees two lakhs only), of which, last installment was made on 20.04.2018. Thus, the outstanding now mounted to Rs.21,00,000/- (Rupees twenty one lakhs only).*

*3. Besides the above, the petitioner Society made so many allegations with respect to the quality of construction, not fulfilling the promises like provisioning of so many amenities, illegally re-connecting electricity line for sewerage treatment plant, which necessitated the*



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*petitioner to pay fine of Rs.3,35,716/- to the Tamil Nadu Electricity Board, constructing and selling eight more flats in the common land already earmarked for and owned by all the 92 owners, etc., Thus, according to the petitioner, it invoked arbitration clause (clause 13) of the Construction Agreement and sent a legal notice dated 04.04.2019 nominating an Arbitrator, which was responded to by the respondent on 21.05.2019 with untenable grounds necessitating the petitioner to invoke Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, "the Act") to file this petition seeking the aforesaid prayer.*

*4. Countering the allegations as false, frivolous, baseless and incorrect, the respondent filed a counter-affidavit dated 12.09.2019. It is stated by the respondent that it fulfilled all the obligations and after adjusting the corpus fund towards the subscription to be paid by the users of the gym and rent collected by the society for the use of the supermarket, in terms of the Construction Agreement, paid the balance sum of Rs.3,00,000/- to the petitioner society. It is also stated that out of 100 flat owners, only 53 members were authorized the petitioner to file this petition and as such the same is not maintainable.*

*6. Heard the learned counsel for the petitioner and the countersubmissions made by the learned counsel for the respondent and perused the materials placed before this Court.*

*7. The existence of an arbitration agreement is not disputed by the learned counsel for the respondent. His only contention is that it is not open to the petitioner to invoke the said clause at this stage after the expiry of the maintenance obligation cast upon it, that too, when the respondent fulfilled all their obligations during the subsistence of the Construction Agreement.*



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8. It is to be stated that the Hon'ble Apex Court in the judgment in *Duro Felguera S.A. Vs. Gangavaram Port Limited*, (2017) 9 SCC 729, held as follows :

"59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co. [SBP and Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* and *Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267]*. This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists—nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."

Therefore, this Court need not venture into the submissions of the learned counsel for the respondent, as admittedly, there is an arbitration clause in existence between the parties.

9. Accordingly, this Court appoints Mr.S.Rajasekar, Advocate, having office at No.T-58B, 29, 2nd Cross Street, Besant Nagar, Chennai-600 090 (Phone No.044-2491 4161 and 044-24911819) as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings shall be



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conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

10. The Original Petition is ordered accordingly. The parties shall bear their own costs.'

**(b) 16 heads of claims as culled out from the claim statement:**

<b>S.No.</b>	<b>Heads of Claim</b>
<i>I</i>	<i>Return of Corpus Fund along with interest</i>
<i>II</i>	<i>Bore Well completion</i>
<i>III</i>	<i>Repair of Wall Cracks</i>
<i>IV</i>	<i>Claim Towards Weathering Course</i>
<i>V</i>	<i>ARD Automatic:(automatic rescue device in all the lift)</i>
<i>VI</i>	<i>Towards Plastering of Compound Wall</i>
<i>VII</i>	<i>Towards non-provision of Fire Extinguishers</i>
<i>VIII</i>	<i>Towards provision of Air Conditioners for Community Hall</i>
<i>IX</i>	<i>STP-Sewerage Treatment Plan - Illegal EB Meter payment</i>
<i>X</i>	<i>C.C.T.V Hard disk and 2 CC TV Cameras</i>
<i>XI</i>	<i>Towards Block-wise Deficiencies</i>
<i>XII</i>	<i>Rain Water Harvesting</i>
<i>XIII</i>	<i>Non-provision of Land Scope</i>
<i>XIV</i>	<i>Reimbursement of Double payment for Q block Amenities</i>
<i>XV</i>	<i>Provision of Original Documents and Certificates</i>
<i>XVI</i>	<i>Towards maintenance charges of Gym and Super Market</i>

**(c) Issues framed by Arbitral Tribunal [AT]:**

'(1) Whether the claimant is entitled to the various claims made in the petition, including interest?

(2) Whether the construction agreement is enforceable in law?





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- (3) *Whether the claim is hit by law of limitation?*
- (4) *Whether there is any breach of contract by the respondent?*
- (5) *Whether the respondent has admitted its liability?*
- (6) *To what other reliefs is the claimant entitled?'*

**(d) Operative portion of the impugned award wherein 10 heads of claims have been allowed:**

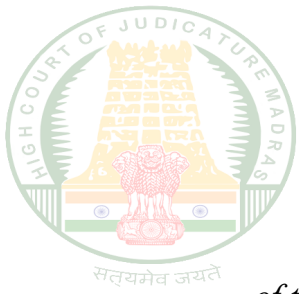
*'Resultantly, the following Award is passed by the Tribunal*

*(1) The claimant is awarded a sum of Rs.22,92,000/- towards refund of corpus fund and repair of wall cracks, payable with simple interest @ 18% P.A for the period 01.10.2017 to 28.07.2021 and future interests @ 9.3% P.A on the sum of Rs.22,92,000/- from the date of the award till the date of realisation.*

*(2) The claimant is awarded a sum of Rs.90,91,432/- towards re-laying weathering course, payable with simple interest @ 18% P.A for the period 01.12.2017 to 28.07.2021 and future interests @ 9.3% P.A on the sum of Rs.90,91,432/- from the date of the award till the date of realisation.*

*(3) The claimant is awarded a sum of Rs.19,300/- towards completion of Borewell, payable with simple interest @ 10% P.A for the period 01.12.2017 to 28.07.2021 and future interests @ 9.3% P.A on the sum of Rs.19,300/- from the date of the award till the date of realisation.*

*(4) The claimant is awarded a sum of Rs.12,00,000/- towards Automatic Rescue Device (ADR) replacement for lifts, payable with simple interest @ 18% P.A for the period 09.12.2019 to 28.07.2021 and future interests @ 9.3% P.A. on the sum of Rs.12,00,000/- from the date*



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*of the award till the date of realisation.*

*(5) The claimant is awarded a sum of Rs.4,80,000/- towards air conditioners and block wise deficiency, payable with simple interest @ 10% P.A. for the period 09.12.2019 to 28.07.2021 and future interests @ 9.3% P.A on the sum of Rs.4,80,000/- from the date of the award till the date of realisation.*

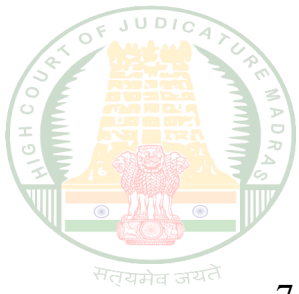
*(6) The claimant is awarded a sum of Rs.4,47,173/- towards fire extinguishers, STP and EB meter payment without interest.*

*(7) (a) The respondent is directed to produce original documents for due diligence and furnish true copies thereof or extracts therefrom on a request being made by any of the flat owners.*

*(b) The respondent is directed to handover original layout plan approval, building plan approval, final drawings of electrical and plumbing, licence to operate STP and lift etc., to the claimant association within a period of 30 days of the award.*

*(8) The claimant is awarded a sum of Rs.4,12,031/- towards cost, payable with simple interest @ 9.3% P.A. on the said sum from the date of the award till the date of realisation.'*

6. The above aspects of the captioned Arb OP (extracted and reproduced supra) are telltale the trajectory the matter has taken thus far besides capturing essentials that are imperative for appreciating this order.



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7. It is also to be noted that before the sole Arbitrator who constituted AT which made the impugned award, on the side of said owner's Association as claimant two witnesses were examined namely, C.W.1 and C.W.2 but no oral evidence was let in on the side of builder and on the side of said owner's Association as many as 50 exhibits were marked namely, Ex.C-1 to Ex.C-50 but no documents were marked on the side of builder. In other words, while claimant i.e., said owner's Association let in oral evidence, examined two witnesses namely, C.W.1, C.W.2 and marked 50 exhibits namely, Ex.C-1 to Ex.C-50. To be noted, respondent-builder neither let in oral evidence nor marked any documents. AT appointed a civil engineer (Ajeez Mohideen) and examined him as Tribunal Witness (T.W.1).

8. Notwithstanding very many averments in captioned Arb OP and several grounds raised in captioned Arb OP, in his campaign against the impugned award in the captioned Arb OP, Mr.V.Manohar, learned counsel on record made five pointed submissions and they are as follows:

- (a) A preliminary ground that the secretary of said owner's Association is not a competent person to file the claim has not been considered by AT in the impugned award;



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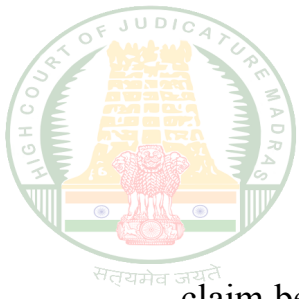


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- (b) Refund of corpus fund has already been concluded but AT has gone into the arena and given a finding;
- (c) Cracks were only normal construction issues and the impugned award makes a mountain out of a molehill;
- (d) The compound wall issue is virtually a non-issue but AT has gone into the same;
- (e) Arbitrator awarded interest which has not been provided for in the contract;

9. Let me now deal with the five grounds that have been urged before this Court.

10. First ground pertains to competence of Secretary of said owner's Association to file claims before AT. The written statement of builder filed in January 2020 before AT is before this Court and there is no pleadings. As already alluded to supra, no oral evidence was let in and no exhibits were marked on the side of builder. Absent pleadings (absent oral and documentary evidence) it cannot be gainsaid that AT did not consider the preliminary issue regarding Secretary of said owner's Association laying the



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claim before AT. Therefore, this ground is a clear non-starter and it falls flat on its face at the outset.

11. This takes me to the next ground of refund of corpus fund. The argument is that this issue was concluded but there is no document to demonstrate that this issue was concluded as between said owner's Association and builder. As already alluded to supra, builder who was respondent before AT neither let in oral evidence nor marked even a single document. None prevented the builder from marking the documents before AT if there was one. In any event, the documents cannot be now introduced in a Section 34 Court in the light of **Canara Nidhi Limited** case [*M/S. Canara Nidhi Limited vs M. Shashikala* reported in **2019 SCC OnLine SC 1244**]. Relevant paragraphs are paragraphs 18 to 20 and the same read as follows:

*'18. After referring to Justice B.N. Srikrishna Committee's Report and other judgments and observing that the decision in Fiza Developers [Fiza Developers & Inter-Trade (P) Ltd. v. AMCI (India) (P) Ltd., (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637] must be read in the light of the amendment made in Section 34(5) and Section 34(6) of the Act and amendment to Section 34 of the Arbitration Act, 1996,*

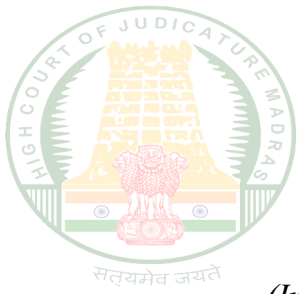


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*in Emkay Global Financial Services Ltd. v. Girdhar Sondhi [Emkay Global Financial Services Ltd. v. Girdhar Sondhi, (2018) 9 SCC 49 : (2018) 4 SCC (Civ) 274] , it was held as under : (SCC p. 63, para 21)*

*“21. It will thus be seen that speedy resolution of arbitral disputes has been the reason for enacting the 1996 Act, and continues to be the reason for adding amendments to the said Act to strengthen the aforesaid object. Quite obviously, if issues are to be framed and oral evidence taken in a summary proceeding under Section 34, this object will be defeated. It is also on the cards that if Bill No. 100 of 2018 is passed, then evidence at the stage of a Section 34 application will be dispensed with altogether. Given the current state of the law, we are of the view that the two early Delhi High Court judgments in Sandeep Kumar v. Ashok Hans [Sandeep Kumar v. Ashok Hans, 2004 SCC OnLine Del 106 : (2004) 3 Arb LR 306] , Sial Bioenergie v. SBEC Systems [Sial Bioenergie v. SBEC Systems, 2004 SCC OnLine Del 863 : (2005) 79 DRJ 156] , cited by us hereinabove, correctly reflect the position in law as to furnishing proof under Section 34(2)(a). So does the Calcutta High Court judgment in WEB Techniques & Net Solutions (P) Ltd. v. Gati Ltd. [WEB Techniques & Net Solutions (P) Ltd. v. Gati Ltd., 2012 SCC OnLine Cal 4271] We may hasten to add that if the procedure followed by the Punjab and Haryana High Court judgment in Punjab SIDC Ltd. v. Sunil K. Kansal [Punjab SIDC Ltd. v. Sunil K. Kansal, 2012 SCC OnLine P&H 19641] is to be adhered to, the time-limit of one year would only be observed in most cases in the breach. We therefore overrule the said decision. We are constrained to observe that Fiza Developers [Fiza Developers & Inter-Trade (P) Ltd. v. AMCI*



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*(India) (P) Ltd., (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637] was a step in the right direction as its ultimate ratio is that issues need not be struck at the stage of hearing a Section 34 application, which is a summary procedure. However, this judgment must now be read in the light of the amendment made in Sections 34(5) and 34(6). So read, we clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(a), they may be brought to the notice of the court by way of affidavits filed by both parties. Cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties. We, therefore, set aside the judgment in Girdhar Sondhi v. Emkay Global Financial Services Ltd. [Girdhar Sondhi v. Emkay Global Financial Services Ltd., 2017 SCC OnLine Del 12758] of the Delhi High Court and reinstate that of the learned Additional District Judge dated 22-9-2016. The appeal is accordingly allowed with no order as to costs.”*

*(emphasis supplied)*

*The legal position is thus clarified that Section 34 application will not ordinarily require anything beyond the record that was before the arbitrator and that cross-examination of persons swearing in to the affidavits should not be allowed unless absolutely necessary.*



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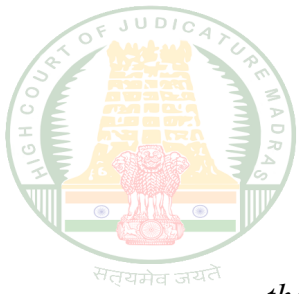


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**19.** *The question falling for consideration is whether the present case is such an exceptional circumstance that it was necessary to grant opportunity to Respondents 1 and 2 to file affidavits and to cross-examine the witnesses is made out. The affidavit filed by the respondents along with application filed under Section 151 CPC does not indicate as to what point the first respondent intends to adduce except stating that the first respondent intends to adduce additional evidence relating to the subject of dispute. The affidavit does not disclose specific documents or evidence required to be produced except stating that the first respondent intends to adduce additional evidence or otherwise the first respondent will be subjected to hardship in the arbitration suit filed by her under Section 34 of the Act. As rightly contended by the learned counsel appearing for the appellant that there are no specific averments in the affidavit as to the necessity and relevance of the additional evidence sought to be adduced.*

**20.** *By perusal of the award, it is seen that before the arbitrator, Respondent 1 filed her written statement and the other respondents also filed separate written statements. It was contended that the documents were forged. Both parties adduced oral and documentary evidence. The appellant led evidence by examining two witnesses Balakrishna Nayak (PW 1) and B.A. Baliga (PW 2) and exhibited documents P-1 to P-47. Respondents 1 and 2 also examined five witnesses viz. M. Shashikala (RW 1), Mamatha alias Mumtaz Hameed (RW 2), Latha (RW 3), Chitralekha Umesh (RW 4) and B.R. Nagesh (RW 5). Respondents 1 and 2 also produced documentary evidence, Exts. R-1 to R-13. As held by the District Judge, the grounds urged in the application can very well be considered by the evidence adduced in*





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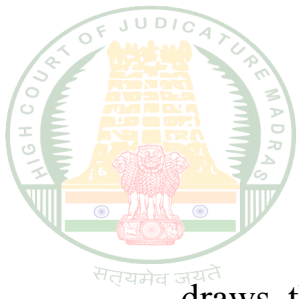
*the arbitration proceedings and considering the arbitral award. Further, in the application filed by Respondents 1 and 2 seeking permission to adduce evidence, no ground was made out as to the necessity of adducing evidence and what was the nature of the evidence sought to be led by Respondents 1 and 2. The proceedings under Section 34 of the Act are summary proceedings and is not in the nature of a regular suit. By adding sub-sections (5) and (6) to Section 34 of the Act, the Act has specified the time period of one year for disposal of the application under Section 34 of the Act. The object of sub-sections (5) and (6) to Section 34 fixing time-frame to dispose of the matter filed under Section 34 of the Arbitration Act, 1996 is to avoid delay and to dispose of the application expeditiously and in any event within a period of one year from the date of which the notice referred to in Section 34(5) of the Act is served upon the other party. In the arbitration proceedings, the parties had sufficient opportunity to adduce oral and documentary evidence. The High Court did not keep in view that Respondents 1 and 2 have not made out grounds that it is an exceptional case to permit them to adduce evidence in the application under Section 34 of the Act. The said directions of the High Court amount to retrial on the merits of the issues decided by the arbitrator. When the order of the District Judge dismissing the application filed by Respondents 1 and 2 does not suffer from perversity, the High Court, in exercise of its supervisory jurisdiction under Articles 226 and 227 of the Constitution of India, ought not to have interfered with the order passed by the District Judge and the impugned judgment [M. Shashikala v. Canara Nidhi Ltd., 2014 SCC OnLine Kar 12666 : (2014) 6 Kant LJ 311] cannot be sustained.'*



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12. The aforementioned **Canara Nidhi Limited** principle/ratio completely douses the second point.

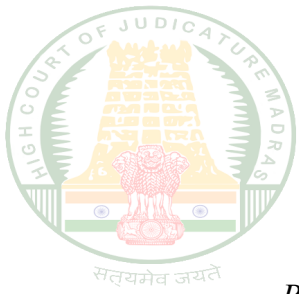
13. The above takes me to third and fourth points. This Court deems it appropriate to deal with third and fourth points together since they turn on construction and complaint regarding civil construction. One pertains to some cracks and other pertains to construction of compound wall. As already alluded to supra in the narrative qua factual matrix, AT has taken the assistance of a qualified Civil Engineer, examined him as T.W.1 (Tribunal Witness) referred to the report, deposition of T.W.1 and returned the findings. Going into these aspects of the matter in a Section 34 legal drill is clearly and indisputably forbidden after the **Ssangyong** judgment [**Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India** reported in (2019) 15 SCC 131]. In **Ssangyong** principle/ratio earlier principles of Hon'ble Supreme Court in **Associate Builders** case [**Associate Builders Vs. Delhi Development Authority** reported in (2015) 3 SCC 49] stood elucidated/classified/varied and therefore, review on merits of the matter is completely forbidden. This itself



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draws the curtains on the third and fourth points together. To be noted relevant paragraphs in **Ssangyong** case law are Paragraphs 34 to 36 and the same are as follows:

*'34. What is clear, therefore, is that the expression “public policy of India”, whether contained in Section 34 or in Section 48, would now mean the “fundamental policy of Indian law” as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to “Renusagar” understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate*



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*Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .*

*35. It is important to notice that the ground for interference insofar as it concerns “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.*

*36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with.'*



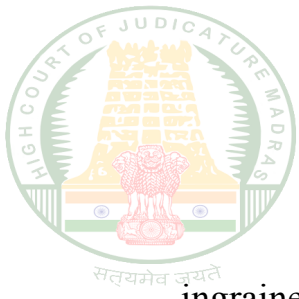
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14. With regard to fifth point, contract and interest provided for in the contract is not before this Court and therefore this issue cannot be examined by this Section 34 Court. It is an argument in the abstract and it cannot but be left at that.

15. To be noted, I have mentioned elsewhere supra in this order that there will be some discussions about the scope of legal drill under Section 34 of A and C Act.

16. Section 34 legal drill is neither an appeal nor a revision. It is not even a full-fledged judicial review. It is a limited challenge to an arbitral award under specific legal slots adumbrated in sub-sections(1) and (2) besides standalone (2A) of Section 34 of A and C Act which have been described as 'pigeon holes'. The test is whether a challenge to an arbitral award fits nay snugly fits into any one or more of the 'legal slots' described by this Court as 'pigeon holes', if the answer is in the affirmative, arbitral award will be dislodged. If that not be so, there will be no judicial intervention. Legal philosophy is sanctity of finality of arbitral award



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ingrained in Section 35 read with minimum judicial intervention ingrained in Section 5 of A and C Act makes Section 34 legal drill a default exercise. This Court also reminds itself that Section 34 legal drill which is a mere challenge to an arbitral award is a delicate balance between a blend of sanctity of finality of arbitral awards and minimum judicial intervention ingrained in Sections 35 and 5 of A and C Act respectively on one side and bedrock of due process of law i.e., judicial review on the other. To be noted, Sections 35 and 5 of the A and C Act read as follows:

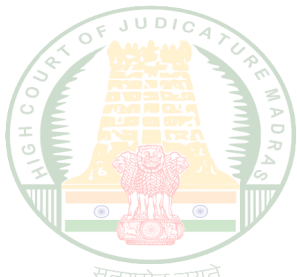
**Section 35 of A and C Act reads as follows :**

*'35. Finality of arbitral awards:- Subject to this part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.'*

**Section 5 of A and C Act reads as follows :**

*'5. Extent of judicial intervention:- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this part.'*

17. The narrative, discussion and dispositive reasoning thus far will make it clear that the captioned matter does not fit into much less snugly fit



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into any of the slots adumbrated in Section 34 of A and C Act.

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18. It is also deemed appropriate to mention that this Court has made Rules under Section 82 of A and C Act and the matter was heard out in accordance with Rule 8 of 'The Madras High Court (Arbitration) Rules, 2020' [hereinafter 'MHC Arbitration Rules' for the sake of convenience and clarity] and clause 8.5 of Practice Directions thereat. In this regard, this Court reminds itself that Rule 8 of MHC Arbitration Rules and clause 8.5 Practice Directions are *inter alia* predicated on ***Fiza Developers*** case law [***Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited*** reported in (2009) 17 SCC 796]. Law laid down by Hon'ble Supreme Court in ***Fiza Developers*** case law is to the effect that a Section 34 petition and hearing of the same is a one issue summary procedure. Hon'ble Supreme Court has also gone on to explain that 'one issue' does not mean that *lis* should turn on one issue. It is made clear that arbitral award being put to challenge itself is an issue and procedure qua Section 34 legal drill is summary. This principle has been reiterated by Hon'ble Supreme Court in ***Emkay Global*** case [***Emkay Global Financial Services Ltd. v. Girdhar Sondhi*** reported in (2018) 9 SCC 49] as a step in the right direction. At the



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risk of repetition, it is deemed appropriate to say that Rule 8 of MHC Arbitration Rules and Clause 8.5 of Practice Directions thereat, (made in exercise of powers vested in the High Court under Section 82 of A and C Act) constituted the procedural trajectory of captioned Arb OP in the Admission Board.

19. Sequitur is curtains are down qua captioned Arb OP. In other words, captioned Arb OP is dismissed. There shall be no order as to costs.

**05.04.2022**

Speaking/Non-speaking order  
Index : Yes / No

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**05.04.2022**