

Karnataka High Court

Kalayithra Engineering ... vs The Chief Engineer (Civil) on 11 June, 2008

Author: V.G.Sabhahit & S.N.Satyanarayana

III THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF JUNE, 2008

PRESENT

Mr. Justice S.M. Kulkarni, J.

AND

THE HONORABLE MR. JUSTICE V.

Mr. Justice S.M. Kulkarni, J.

%L'WEE :

KALAYITHRA ENGINEERING_ 'CONS'ITRUCTIION, '
REGISTERED PARTNERSHIP FIRM- .

REP. BY ITS MANAGING PARTNER .A *

SRI K M JOSEPH HASNAN S %
REGISTERED OFFICE AT 79, '3'1FAGE
INDIRANATHA R - A

BANGALORE - gss. Q V. i; '1, 'S'. AI'>PELMNT

(By Sri: K xvi JGISEi;3H'V()1: V)

AND :

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THE: gH1Er»{C1v1L)
DEP'L'.>QFTELECOMMUNICATIONS
cro com=ouNn':s2A..1 BHAVAN ROAD

.» +BAN-GALORE 1. , , .

- ALSO AT 36 C.R.AVENUE

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Ac

' * » 'V S:ALc:ur:fI*.a.__ 12

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A REP- BY. ITS SECRETARY

".T)E;P'I'.' are COMMUNICATIONS

N'EW~ DELHI

3 THE EXECUTIVE ENGINEER (civil;
amt. ow No.1 mo COMPLEX _2
No.1 swam VIVEKARANDA
ULS00R "
BANGALORE 1.

(By 811': s «:2 MAHADEVAMUR'm--¥ _)

THIS MFA IS FILED 'UiAS'3'??({}) 0?_'ARBiTRATIoN AND
CONCILIATION am', AGAIHM j' THE wJ_::~~RDER DATED
21/6/06 PASSED' I__N A..'C"'rm}.9j96. 02%: {I'¥~IE FILE 0? VI
ADDL.C!'I'Y CI?a7fLg,iUD({}E,\$ E'ANGAi;05?E.-- cm (coca-3.1},

DISMISSING.-T\$r{E5I.I?E7T3TI\$)N....F'IS:«El3 U[S.30 AND 16 RIW.

SEC.33 OF? A123zfrRA*r1oNi;j vAl"'-I'.,,.-F(AR"' CHALLENGHIG THE
AWARD pggrezxg 2T:_«f:}Q,*1995. " 3

12:13 _MlF'li\..;VcgmV:' {Eng .,5n-§os~ hes' nag' this day, SABHAHIT
J., '

appcfil"by.._.thc pefitrioner in AC..9/96 gs filed being

'by«..ihs.._oIdcr dated 21.6.2005 pamed by the VI

Sessions Judge, Baum": City (econ-

V -V 11) the petition flied under Sections 30 and 16

H A of the Arbiuanion Act (for short 'tbs Act') c

dated 27. 10.1995.

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.. 3 ..

2. The essential facts of the case leading upto this

appeal with reference to the rank of the panics befon':"1f.he

trial court are as foliows:

An age-ement was entered into between M

herein and respondent for . of P u

quarters at Hebbal, Bangalore. between the perm' s, the mattee " .. ___ 'tzcéitor " L» in View of the clause in refer" the djepute to the schedule pmperty□zefened to Sri. S.K.Ahuja so1e:'a_r_bit1jater* Vz.a:..j%£ni".ezdj11dieate me dispute of JOY. Arbitrator after passed an award on 27.13.95 to the mrdes aad thereafter □led the on 3.9.4.96. The appellant heme; a§;V:p1i:j:Vat§son'V'u1;der Section 14(2) of the Act and I6 I/'W. 33 of the Act averting that made by the appellant had been wrongly Arbitrator and the saki cl□xms.-mts may be by} modifying the award passed by the Arbitrator and 'éiaéi .. 4 ..

the same was numbered as AC.No.9/96. Notice was issued to the respondents in the said application No.AC 9/96. IN the said application, the respondents filazi objec□ona contending that the application was barred by nine an the craim made by the appellant befoxe the _ been considered and then: was no in the '4 The tria} court by oxtier dated application □led by the appe□anjz "is L. and on merits heki that the is aging éo for * Cm "dad Rs. 1,4G,000/- with inter:-,_"s"t«.at till the date we cow» " ' ' ' % Ovdarr <:l+-34.11.03 .a{1i;rv\ a,QaoQ~.;

P3 3'o Ho□kiv SW5': who of actual payment. Being by.v fiAie:V order, this appeal is □w court.

appeaxed -'and the learned counsel appearing 350 the contentions urged, the points _eonsidemt11on axe:

Lee» "1. Whether the finding of the trial application □led by the appclhnt is justi□ed or ca□s for apptai? '

2. Whether the lioiiiing that award passed by the set aside and that the appeal*a1ii:; of Rs.1,40,000/- ,wg?;;-;_ "\$%\$¢« 3; Cm" deg' with interest gt the date of payment vide Coulrit V' V' Oreiasm.

01+: twnuos M' Q AL: 3.

Pa ka Hon'L€nsnss:\$., . _ points m □xlw:

is justir"see1L%orT.¢=\$~;z11s this appeal? % :.%N\$. 1%:i(The smmg of the ma court that the by the appc□ant is barred by time is imble to set asiée as the same iserxoneous. V' f5Point No.2: The □hding of the trial court that the _a;\$pc23ant is entitled to award of Rs.£,40,000/-- with inimest 30.9» 31+ 4:

* Co:a:sé>r¢f\$é\${ at 13% pa □ora an the date of paymt is □ahk to VI; 9. Ch}! dq*§J: bf: S61'. S□d□

1. x 1. 0% \§:.2"~ j.€~'¢m~aQw"

:92» in tuiov\$U2n.sr\ss3 .. 5 _.

Point No.3: As per the □hal order 531' the I/W. 33 of the Act was □led by the xiii K V' sand'

appficalfaon was çiiismzssed' ' by:"g1d:'tjfr'~da£cdj:V _ ' However, on application filed f ' 21 was aimed and application was ___ of dehy. Being and the matter was consiicmÇan of the mmansi, on behalf of the appellant was examined as P'W.1 hé*g;§; to P69. 011 behaxr of the and Ex:s.R1 and R2 were court after considering the oontenÇon of the mateniai on zecord held that the by the appellant herein was barmd by time Viiwas not filed within thirty days from the date of maxing \,/s 4' Cioweioiecl ' VubkCou9cI Oroler C:-H:':}lu|og ctÇkndccÇhi PE. ks eacrlsÇswsu notice regarding Çing of the award in court and that on mezits the appncatsec is entitled to A- appellant wouÇd be entitled to an award for.VcR5;'i;§3{§;oSI§:}{/ 'A V' . _ with interest at 18°14: p.a. 7'? payment. However, since the ..ha£1ed L' by time, the applicati.on___ was by the said older dated in AC.9/96 has Prcfened this,3PP°a:1,c_ i V'

5. it am by the xeith the notice of Çing the . _ the material on record would show application under Section 14(2);df"t11e Act came in the court and according to since was not served with the notice of the court he could Çk: application 011 i23.A8-E96 same is filed within thirty days fmm the of of the film' g of the award. The trial' court on the basis that the award was passed on Lei» __,8___ 25.1.95 and filed in the court on 9.4.96 and " was Çbd in 2000 and penzod of t" application to set aside the award f<j5i5:.. reconsideration is thirty dayQt___fti'9m the jdatet' of = L' notice of Çing of the is barred by time. whenkmg som £93' from the trial court as to whethe: rcgaxding the Çing of the numbered as AC.23/96 reported that no notice herein in AC.23/96 t the court by the appeÇant and the appellant was numbered as .- ' ' _ -D. . I I in ufshow that the award is filed in the court on was issued to the appellant herein and "V}vheref£:1ft§;.. the finding of the trial court that the application A tiipt been filed Within' tımtı' days nÇnn the date of se:'Vx::e' ofgnotice is erroneous as the same is not based upon the ' tlxatexial on record and the appelian is not served with Lksi]_1.....

8. The learned oounsél agpmring for the has also submitted that the xnattsr may be _ trial court for consideration of the Çhe merits, in accordance with law, wç%az;mr No.2.

9. POINT No.3: xngsw gr to points 1 and 2, we pass the foI}o\vingvoxd§':If:V. 'v V . ' V' V The appeal of the ma' 1 court that the AC9/96 is barred by tiineis that the application Çied by the app;11a;:t3u; {A'c.43/96) is msiaomd to the Çie of v1A.Aa;11.<ii1y 'ciw£f: Judgé (cccrm 1), BanÇosc City. The of that the appelmu is entiÇed to an Iée..T:I:;~;10,000/- with interest at 18% p.a. ftm

-A' cn~wgg+~ea EiiÇtill tkmdate ofpayment is set aside and the mum is Vida, 'L":3uv'c. . . .

" to the ma} court for consxderatzaon of the claun of % o«+aw:%%%%%%%% é Pgs, g~;" _SÇto appear before the trial court on 8.7.2008 to stack 47 _ \'/§ 'appellant, in accordance with law. The parÇes are

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further instxuptions. Let the lower court records in and AC.23/96 shall be tins forthwith, along with the copy';;ar%ft1a;s oxiiier, V