

Simplex Infrastructure Limited vs G.K. Granites Limited

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Court : Kerala Orders

Decided On : Feb-23-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : RP/198/2023

Appellant : Simplex Infrastructure Limited

Respondent : G.K. Granites Limited

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
THURSDAY, THE 23RD DAY OF FEBRUARY 2023 / 4TH PHALGUNA,
1944 RP NO. 198 OF 2023 AGAINST THE ORDER IN AR 159/2022 OF
HIGH COURT OF KERALA REVIEW PETITIONER/RESPONDENT
SIMPLEX INFRASTRUCTURE LIMITED SIMPLEX HOUSE, 27
SHAKESPEARE SARANI, KOLKATA, WEST BENGAL,
REPRESENTED BY ITS CHIEF MANAGER(C), DEBABRATA SARKAR,
PIN - 700017 BY ADVS. A.BALAGOPALAN PRABHU MURALI
KRISHNAN P.SEENA M.S.IMTHIYAZ AHAMMED M.N.MANMADAN
A.RAJAGOPALAN RESPONDENT/PETITIONER G.K. GRANITES
LIMITED KIZHCKAMBALAM P.O., KUNNATHUNADU, ERNAKULAM

DISTRICT, KERALA , REPRESENTED BY ITS MANAGING PARTNER, SRI. GEORGE ANTONY., PIN - 683562 THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 23.02.2023, ALONG WITH RP.205/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH
THURSDAY, THE 23RD DAY OF FEBRUARY 2023 / 4TH PHALGUNA,
RP NO. 205 OF 2023 AGAINST THE ORDER IN AR 158/2022 OF HIGH
COURT OF KERALA REVIEW PETITIONER/RESPONDENT SIMPLEX
INFRASTRUCTURE LIMITED SIMPLEX HOUSE, 27 SHAKESPEARE
SARANI, KOLKATA, WEST BENGAL, PIN:700017 REPRESENTED BY
ITS CHIEF MANAGER(C) DEBABRATA SARKAR, PIN - 700017 BY
ADVS. A.BALAGOPALAN A.RAJAGOPALAN M.N.MANMADAN
M.S.IMTHIAZ AHAMMED P.SEENA PRABHU MURALI KRISHNAN
RESPONDENT/PETITIONER: CRYSTAL GRANITES LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR, SRI. GEORGE
ANTONY CHULLY P.O., THATTUPARA, ERNAKULAM DISTRICT,
KERALA, PIN - 685381 THIS REVIEW PETITION HAVING COME UP
FOR ADMISSION ON 23.02.2023, ALONG WITH RP.198/2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 23rd day of February, 2023 The review petitioner in both these review petitions is the same. The respondents in these review petitions are sister concerns. The facts are similar. By order dated 02.12.2022, this Court appointed and directed the Arbitrator to resolve the disputes in both the Arbitration Request Nos.158 and 159 of 2022.

2. The review petitioner submits that Annexure-A3

is the Confirmatory Purchase Orders of the review petitioner, wherein Clauses 23 and 24 specifically provides that the venue and seat of Arbitration is at Kolkata. Therefore, if at all there is any arbitration, it can only be at Kolkata and this Court does not have jurisdiction to entertain the Arbitration Request.

3. It is the specific case of the review petitioner that

the review petitioner has not accepted Annexure-A2 Purchase Order and therefore the review petitioner is not bound by the Arbitration Clause contained therein. This Court ought not have acted upon unsigned documents for appointing Arbitrator.

4. I have heard the learned counsel for the review petitioner.

5. It is evident from Annexure-A3 that the

Confirmatory Purchase Orders were issued on 01.12.2017 and 30.12.2017 in R.P. No.198 of 2023 and R.P.No.205 of 2023 respectively. Annexure-A3 provides that the dispute should be resolved through arbitration and the venue and seat of arbitration should be at Kolkata.

6. Annexure-A2 is a Purchase Order issued by the

respondents on 29.06.2019. Annexure-A2 also provides for resolution of disputes through arbitration. Annexure-A2 provides that all disputes arising out of the agreement and consequent supply shall be resolved by mutually agreed Arbitrator in accordance with the Indian Arbitration and Conciliation Act, 1996, and principal place of such arbitration will be at Ernakulam alone.

7. It is an admitted position that the review

petitioner has acted upon Annexure-A2 which is the subsequent order and has accepted the supplies made by the respondents. The learned counsel for the review petitioner would, however, contend that the supplies were accepted as it was a continuing contract.

8. I do not find the argument of the review petitioner

plausible. Annexure-A3 is an anterior Purchase Order. Annexure-A2 is a subsequent one. Annexure-A2 provides for arbitration at Ernakulam. The review petitioner has acted upon Annexure-A2. Therefore, at this point of time, the review petitioner cannot contend that this Court ought to

have relied on Annexure-A3 Confirmatory Purchase Order

issued in the year 2017. The review petitions are therefore without any merit and are dismissed. sd/- N.NAGARESH JUDGE hmh APPENDIX OF RP 198/2023 PETITIONER ANNEXURES Annexure A1 THE TRUE COPY OF THE JUDGEMENT DATED 02.12.2022 IN A.R 159 OF 2022 Annexure A2 A TRUE COPY OF THE QUOTATION NO.GK/3177/QUOTATION DATED 02.07.2018 SUBMITTED BY THE RESPONDENT HEREIN A.R 159 OF 2022 Annexure A3 TRUE COPY OF THE PURCHASE ORDER/AGREEMENT DATED 01.12.2017 APPENDIX OF RP 205/2023 PETITIONER ANNEXURES Annexure A1 THE TRUE COPY OF THE JUDGEMENT DATED 02.12.2022 IN A.R 158 OF 2022 Annexure A2 TRUE COPY OF ANNEXURE A2 DATED 29.062019 SUBMITTED IN A.R 158 OF 202 Annexure A3 TRUE COPY OF THE PURCHASE ORDER/AGREEMENT DATED 30.12.2017

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