

**The Chairman, Vs DELETED**

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**SooperKanoon Citation :** [sooperkanoon.com/1422392](http://sooperkanoon.com/1422392)

**Court :** Chennai

**Decided On :** Feb-23-2026

**Judge :** Honourable Mr Justice C.V. Karthikeyan, Honourable Mr. Justice K. Kumaresh Babu

**Appeal No. :** Arb Appeal/14/2025

**Appellant :** The Chairman,

**Respondent :** Deleted

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.01.2026 Pronounced on : 23.02.2026

CORAM

THE HON'BLE MR JUSTICE C.V.KARTHIKEYAN AND THE HON'BLE MR JUSTICE K.KUMARESH BABU and CMP No.6208 of 2025

1. The Chairman Puducherry Housing Board, Anna Nagar, Nellithoppe, Puducherry - 605 005.

2. The Secretary Puducherry Housing Board, Anna Nagar, Nellilthoppe, Puducherry - 605 005.

3. The Executive Engineer Puducherry Housing Board, Anna Nagar, Nellilthoppe, Puducherry - 605 005. ..Appellants / Petitioners Vs. Page1 of 13

1. Mr.Justice K.P.Sivasubramaniam (Deleted) No.47, Pulla Avenue, Shenoy Nagar, Chennai - 600 030.

2. M/s Sri Pathy Associates Pvt Ltd Rep. by its Chairman/Authorised Signatory, S.Sekar, Civil Engineering Contractors, No.62, Thanga Perumal Koil Street, Erode - 001. R1 name deleted. Cause title amended vide Court order dated 04.08.2025 made in Arb. Appeal No.14/2025 (CJ and SMJ)

..Respondents / Respondents This Arbitration Appeal filed under Section 13(1A) of the Commercial Courts Act, 2015 r/w. Section 37(1) of the Arbitration & Conciliation Act, against the order and decretal order dated 12.08.2024 made in Arbitration OP.No. 33/2019 on the file of the Court of the Principal District Judge (Commercial Court), Puducherry. For Appellant(s): Mr. T.M.Naveen For Respondent(s): Mr.A.Edwin Prabakar For Mr. D. Gopal for R2 R-1 deleted vide order of Court dated 4/8/2025  
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## **JUDGMENT**

(Judgment of the Court was delivered by C.V.Karthikeyan J.) This Arbitration Appeal had been filed questioning the order dated 12.08.2024 in Arb.O.P.No.33 of 2019 on the file of the Principal District Court / Commercial Court at Puducherry.

2.The respondent herein, M/s.Sri Pathy Associates Private Limited at Erode, had filed a claim petition before the sole arbitrator in accordance with Agreement No.2/2002-03 entered into between them and the appellants herein relating to a contract for Construction of Composite

Housing Scheme at Suthanthira Ponvizha Nagar (Rainbow Nagar) Puducherry, which consisted of 49 units of MIG Flats in 7 Blocks and also included both civil and electrical works. The tender for the same had been issued on 23.01.2002 for a value of Rs.3,27,15,868/-. The work order was issued on 19.04.2002. The schedule for completion was 9 months. The work commenced on 29.04.2002. It should have been completed as per the work order on 28.01.2003. But it was actually completed on 05.12.2003 with a delay of 10 months and 7 days. It had been contended that final extension of time had been granted upto 05.12.2003 by letter dated 23.07.2004 without levy of compensation.

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3.It had been contended in the claim statement that the tender was based on pre-qualified bid. The appellants had however reduced the scope of the tender and also subsequently called for open tender for construction of the remaining blocks without awarding a preferential order to the respondent. It was contended in the claim petition that since there was reduction in the construction of blocks, the expected profit was not achieved and there was a loss about 15%.

4.It was further contended that there was poor soil condition which prevented further construction after the foundation concrete had been laid. It was further contended that at every stage of the construction variations were indicated by the appellants and this also contributed to the delay in completing the project. The first foundation work was abandoned owing to poor soil investigation by the appellants. The work recommenced after a period of eight months when permission was given to commence the work in an alternate site. Additional expenditure had to be incurred since there was rise in level in the water table and water had to be drained out continuously.

5.It was further contended that the agreement provided for use of Cold Twisted bars / M.S. bars alone. The respondent, however, procured TMT steel manufactured from Vizag Steel Plant which according to them were of superior quality. It was contended that the rate of TMT bars was generally higher by Rs.3.50 to Rs.4.00 per Kg than the ordinary Cold Twisted bars / M.S. bars. It Page4 of 13

was contended that therefore the cost enhanced owing to usage of such TMT bars. It was further contended that the appellants had failed to settle the bills as and when submitted and this had also slowed down the construction progress.

### **Further the structural designs were not given immediately after the work order**

was given and were furnished after much delay from the date of the work order. Claiming that there was a clause in the agreement to refer disputes to arbitration, the claim petition had been filed seeking a total claim of Rs.71,26,445/-. 6.The sole arbitrator by award dated 09.04.2018 had examined the dispute relating to the different quality of steel used and had come to a

### **conclusion that TMT rods were purchased with the knowledge of the appellants**

and that there was no specific prohibition by the appellants from usage of such TMT bars. The claimant was also not informed that the difference in price would not be paid by the appellants. In view that particular fact, the claim seeking difference in the rate was adjudicated in favour of the claimant.

7.With respect to the delay in effecting the payments to the claimant, it had been stated that the delay was also due to the change in the site as a result of poor soil condition and owing to other factors which were beyond the control of the respondent. Finally, the arbitrator had granted, a total compensation of Rs.23,39,961/- which was rounded to Rs.23,40,000/- and also granted interest at Page5 of 13

9% per annum for the period during the pendency of the arbitration proceedings and 18% per annum for the post award period. 8.The appellants challenged this award by filing Arb.O.P.No.33 of 2019 before the Principal District Court (Commercial Court) at Puducherry. By an

**order dated 12.08.2024 the said petition was dismissed, necessitating filing of**

the present Arbitration Appeal. 9.Heard arguments advanced by Mr.T.M.Naveen, learned counsel for the appellants and Mr.A.Edwin Prabakar for Mr.D.Gopal learned counsel for the respondent. 10.Even though in the appeal, the appellants had impleaded the arbitrator as the 1st respondent, subsequently by order dated 04.08.2025 the 1 st respondent had been deleted, which only left the claimant as the sole respondent in the appeal.

11.It is the contention of Mr.T.M.Naveen, learned counsel for the appellants that in the agreement / work order entered into between the appellants and the respondent, it had been specifically provided that MS Tor Steel bars alone should be used for structural steel sections and further that the appellants would be supplying the materials in accordance with the quantity Page6 of 13

required. It had also been provided that the respondent herein should keep in touch with the day to day position regarding the supply of materials and to adjust the progress of the work, so that the labour may not remain idle or they may not raise other claims due to delay in obtaining the materials. It had also been contended that in the agreement, it had been provided that after the final bill had been submitted no further claim would be entertained.

12.It had been contended by the learned counsel for the appellants that the respondent herein had proceeded to utilize TMT bars, the cost of which were more and also independently procured the steel from Vizag

Steel Plant. The learned counsel disputed the contention that the Cold Twisted bars / MS bars were not available in the market necessitating purchase of TMT bars by the respondent from Vizag Steel Plant. He also disputed the contention of the respondent that permission had been granted to use TMT bars and that there was an understanding that the enhanced rate would be paid to the respondent. The learned counsel further contended that after the submission of the final bill, a further claim was made by the respondent towards the difference in the rates of the MS bars and TMT bars. It is contended that this claim should not have been adjudicated and granted by the arbitrator and that this point was also not considered in the petition filed under Section 34 of the Arbitration and Conciliation Act. The learned counsel therefore contended that this Court should reject the claim towards the difference in rate between MS bar and TMT Page7 of 13

**bar. It had been contended that the award of the arbitrator and the further order**

passed in the petition filed under Section 34 of the Arbitration and Conciliation Act should be interfered with to that extent.

13.The learned counsel for the respondent, however, contended that though the site had been initially handed over for putting up of construction of MIG Flats in 7 Blocks, the appellants had failed to conduct soil test before deciding the location where the MIG Flats were to be put up. When the foundation was laid the soil was not fit enough to put up construction in that place. Thereafter, with further delay of about six to eight months an alternate site had been allotted to the respondent. The works had commenced. The learned counsel contended that the steel portion was the critical element in the construction. The respondent had used TMT bars purchased from Vizag Steel Plant. The bills thereof had been submitted to the appellants herein. The learned counsel contended that the quality of the TMT bars were of superior quality than the MS bars suggested by the appellants. He contended that there was

no delay in presenting the bills. The actual cost had been submitted by the respondent. The learned counsel contended that both the learned arbitrator and the Court examining the petition under Section 34 of the Act had correctly adjudicated all issues and therefore, urged that this Court should dismiss the appeal.

Page8 of 13 14. We have carefully considered the arguments advanced and perused the material records.

15. The appellants herein / Puducherry Housing Board had invited tenders for Construction of Composite Housing Scheme at Suthanthira Ponvizha Nagar (Rainbow Nagar) Puducherry - MIG Flats 49 units (M8 - 7 Blocks) including civil and electrical works. The total estimated cost was Rs.2,06,51,434/-. There is no dispute over the fact that the respondent herein, Sri Pathy Associates Private Limited, had participated in the tender and was declared as the successful bidder. Thereafter, issues were raised relating to the site over which the flats had to be constructed. The soil was unfit for putting up construction and an alternate site had been located and handed over to the respondent who had to commence work afresh.

16. But however, the central point raised in this appeal is about the difference in rate claimed by the respondent in purchase of TMT steel bars vis- a-vis MS bars as recommended and suggested by the appellants herein. No ground had been raised that TMT bars utilized by the respondent are of substandard quality. On the other hand, it is the consistent stand of the respondent that they are of superior quality. Naturally, in any construction, the steel bars provide the core strength in the construction and in the longevity of the construction. By usage of higher quality of steel bars the appellants should not Page9 of 13

have entertained any grievance except for the fact that probably the cost was higher.

17.It is the specific case of the respondent that MS bars, which should not have been supplied by appellants, had not been supplied in time and when required and was also not available in the open market. The respondent had therefore purchased TMT bars from Vizag Still Plant. It is also the specific case of the respondent that this fact had been informed to the officials of the appellants and objections were not raised for the usage of TMT bars. There was also no indication that the bills raised would be rejected or not processed. These

**facts had been established both by the Arbitrator and by the Court examining**

the petition under section 34 of the Act. The scope of an appeal under Section 36 of the Act on that ground is extremely narrow.

18.This Court cannot revisit the facts already established. This Court can never step into the shoes of the arbitrator to determine or grant an alternate finding. Even if two particular views could be drawn it would not mean that the view drawn by the arbitrator has to be necessarily set aside, unless perversity is established. The appellants had not stated that the award of the arbitrator suffers from perversity. The only ground of appeal is that, the respondent could not have laid a claim for the difference in price between the TMT bars purchased by them and the MS bars suggested by the appellants. However, as a fact, TMT Page10 of 13

bars had been used. Bills in that regard had been produced and submitted. This fact cannot be denied or disputed by the appellants. Naturally, when such TMT bars had been purchased and had been used in the construction, the respondent is entitled to be paid for the value of such TMT bars. There is no correspondence produced or evidence adduced that the appellants had protested at the usage of TMT bars. It must therefore be held that they had acquiescenced to the usage of the TMT bars in the construction. Having given their consent, either directly

or indirectly, they cannot now turn around and question the bills which had been submitted for consideration and the claim for the difference in price.

19. We hold that both the learned arbitrator and the Court in the petition under Section 34 of the Act had correctly adjudicated the said claim as admissible.

20. The appellants had also raised an issue of a further bill being presented after the final bill. But however, even though, there is a specific clause that no further bills should be raised after the final bill had been presented, the bill so presented is strictly not an additional claim but an explanation to the final bill regarding the TMT bars which had been purchased. Both the issues are interlinked. The claim had been made only for the difference in rate between the cost of the TMT bars purchased and the cost of the MS bars as suggested by the Page 11 of 13

appellants. We find no infirmity in the bills presented. We also find no infirmity or perversity in the award of the learned Arbitrator or in the order passed in the petition filed under Section 34 of the Act. 21. In view of these reasons, we find no ground to allow the appeal. Accordingly, the Arbitration Appeal stands dismissed with costs. Consequently, connected Civil Miscellaneous Petition is closed. (C.V.K.,J.) (K.B.,J.) 23-02-2026 smv Index: Yes/No

### **Speaking/Non-speaking order**

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**C.V.KARTHIKEYAN, J.**

AND

**K.KUMARESH BABU, J.**

smv Pre-delivery Judgment made in 23-02-2026 Page 13 of 13

