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**Subbiah Vs. State of Tamil Nadu, Through Its Superintendent Engineer, (Highways) Rural Roads Division and anr.**

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**SooperKanoon Citation : [sooperkanoon.com/799763](http://sooperkanoon.com/799763)**

**Court : Chennai**

**Decided On : Jan-08-2003**

**Reported in : 2003(1)CTC647**

**Judge : R. Jayasimha Babu and ;N.V. Balasubramanian, JJ.**

**Acts : [Arbitration Act, 1940](#) - Sections 28**

**Appeal No. : L.P.A. No. 188 of 1999 and C.M.P. No. 17159 of 1999**

**Appellant : Subbiah**

**Respondent : State of Tamil Nadu, Through Its Superintendent Engineer, (Highways) Rural Roads Division and anr.**

**Advocate for Def. : M.C. Swamy, Special Government Pleader (CS)**

**Advocate for Pet/Ap. : S. John Sundarlal Suresh, Adv. for ;P. Peppin Fernando, Adv.**

**Judgement :**

**ORDER**

**N.V. Balasubramanian, J.**

1. This appeal is directed against the judgment and decree dated 28.7.1999 in C.M.A. No. 801 of J991 on the file of this Court wherein learned Single Judge held that the arbitrator has no right to extend the time beyond four months' period and even if the parties consent for extension of time, the award would be vitiated by illegality and it would become a non-est. Learned Single Judge has also held that the Court alone has the right to extend the period of time. In this view of the matter, learned Single Judge dismissed the appeal preferred by the appellant herein. It is against the judgment and decree, the present appeal has been filed.

2. We heard learned counsel for the appellant and learned Special Government Pleader. We find that before the arbitrator, both the parties have participated in the arbitration proceedings willingly and without raising any objection even after the expiry of four months. The Supreme Court in *State of Punjab v. Hardyal*, : has held that the power to extend time for making the award even after the expiry of the period prescribed for making the award can be exercised by the appellate Court. The Supreme Court has also held that the fact that the parties to the agreement have taken part in the arbitration proceedings willingly would constitute a relevant circumstance to be taken into account for extending the time for passing the award.

3. Since both the parties have participated in the arbitration proceedings willingly even after the expiry of the time limit for making the award and the award has also been passed, we are of the view that it is a fit case that this Court should exercise the power to extend the period for making the award. Accordingly, the time for passing the award is extended till the date when the award was passed. Since the trial Court as well as the learned Single Judge has not considered the merits of the case, the trial court has to go into the merits of the matter. Accordingly, we set aside the judgments and decrees of both the Courts and remit the matter to the trial Court to pass appropriate orders in accordance with law. The appeal is ordered accordingly. No costs. Consequently, C.M.P. No. 17159 of 1999 is closed.