IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

ARB.A.No. 22 of 2015 (E)

ARB. OP. NO. 51/2015 OF DISTRICT COURT, PALAKKAD

APPELLANT/2ND RESPONDENT:

RELIANCE COMMERCIAL FINANCE RELIANCE CAPITAL LIMITED,
3RD FLOOR, 37 LAL BAG ROAD, BRAHMANDA COURT,
BANGALORE - 560 027.
REPRESENTED BY LEGAL MANAGER, SRI. SAJITH M. PAUL.

BY ADV. SRI. T.RAJESH

RESPONDENTS/PETITIONER & 1ST RESPONDENTS:
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1. SEBI P.L., AGED 43 YEARS,
S/O. P.C.LONAI, MUTTICHUKKARAN APARTMENTS,
FASHION STREET, MISSION QUARTERS, THRISSUR - 5,
PROPRIETOR, UNITED GRANITE, NELLIPPARA,
PANNIYANKARA POST, PALAKKAD DISTRICT.

2. M/S. SDM PROJECT PVT LTD.,
NO.1, 2ND CROSS ROAD, 4TH MAIN KGE LAYOUT,
RMV, 2ND STAGE, 2ND BLOCK, BANGALORE - 560 094,
NOW SHIFTED NO. 4, 3RD FLOOR, 80 FEET ROAD,
RMV, 2ND STAGE, ASHWANTH NAGAR,
BANGALORE - 560 094.

R1 BY ADV. SRI.K.P.SREEKUMAR
R2 BY ADVS. SRI.SANTHEEP ANKARATH
RI.ARUN MATHEW VADAKKAN

THIS ARBITRATION APPEALS HAVING BEEN FINALLY HEARD ON 23-09-2015, ALONG WITH AR. 15/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.

Arbitration Appeal No. 22 of 2015
with
Arbitration Request No. 15 of 2015

Dated this the 23rd day of September, 2015

JUDGMENT

P.R. RAMACHANDRA MENON, J.

Arbitration Request No.15/2015 has been filed by the petitioner seeking to appoint a sole arbitrator for settlement of the dispute which has arisen between the petitioner and the respondent Company in connection with the subject matter of Annexure-I agreement executed between them.

2. The petitioner is that owner of the property comprised in Sy.Nos. 234/2, 33/2 in Kannampara village and Annexure-I agreement was executed with the respondent, enabling the latter to excavate granite stones from the said property based on the leave and licence arrangement; subject to the specific terms entered into, by virtue of which, a monthly licence fee of ₹1,75,000/-

has to be paid to the petitioner; plus a sum of ₹60/MT as the cost of granite. It is stated that the petitioner had to make necessary arrangements spending about ₹40 lakhs, for the smooth functioning of the excavation process. Based on this agreement, it is contended by the petitioner, that nearly 50000 MT of the granite building stones or rubles were excavated from the property and it was transported out. However, the terms of the agreement were not given effect to by the respondent and payment of the agreed licence fee was abruptly stopped, which made the petitioner to send Annexure-II notice dated 20.02.2014 demanding to satisfy the due amount.

3. Meanwhile, the operation of the quarry had also came to a stand still from January, 2014 and the respondent shifted the office from the premises without informing the change in address or such other particulars. It is stated that a total of sum of nearly ₹89,50,000 plus interest rate of 18% per annum is due to the petitioner, from the respondent. As per clause 25 of the Annexure-I agreement, it is provided that in case of dispute or difference in opinion arising between the parties, it shall be sought to be settled by

sole arbitrator. Inspite of sending a proper notice in this regard, it was not acted upon by the respondent and hence the Arbitration Request.

4. Coming to Arbitration Appeal No.22/2015, the petitioner in Arbitration Request No.15/2015 is the 1st respondent, while the 2nd respondent is the sole respondent in Arbitration Request No.15/2015. The case of the appellant in the Arbitration Appeal is that, they had arranged necessary finance in favour of the 2nd respondent Company for purchasing an installation of two machinery 1) a Mobile Batching Plant at the cost of nearly ₹22.5 lakhs and 2) a Power Generating Plant Set of nearly ₹4.8 lakhs. It was making use of the said machinery, that the excavation of granite was being pursued by the 2nd respondent Company from the property owned by the 1st respondent; with regard to which Annexure-I lease agreement referred in Arbitration Request No. 15/2015 was executed. The instalment payments to be satisfied to the appellant by the borrower were not duly honoured on time and the 2nd respondent Company turned to be a defaulter. This made the appellant financier to

approach the City Civil Court, Bangalore by filing necessary proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 and obtained an order to regain the possession of the machinery. The petition was allowed and an Advocate Commissioner was appointed. But in the course of further steps to take possession of the machinery, the appellant came across an order of injunction passed by the District Court, Palakkad in Arbitration O.P. No. 51/2015 filed by the 1st respondent against the very same Company ie., the 2nd respondent under Section 9 to realize the amount stated as due to the 1st respondent.

5. As per the order under challenge, the District Court, Palakkad has made the interim order of injunction passed on 14.01.2015 absolute; to the effect that the machinery shall not be dismantled or removed and nobody shall cause any waste; which shall be valid for a period of one year till the arbitratory proceedings if any initiated to resolve the dispute between the petitioner and the respondent Company was over.

6. Heard the learned counsel appearing for the parties

at length.

7. When the arbitration appeal came up for consideration before this Court earlier on 09.04.2015, the 1st respondent (petitioner in A.R. No. 15/2015) made a submission that the said respondent ready to pay off the amount due to the appellant, which in effect was to be cleared by the respondent Company and that a 'letter of subrogation' might be given to proceed against the latter company. The parties were directed to file an affidavit in this regard and the affidavits have been filed accordingly.

8. In the meanwhile, a dispute was raised by the 1st respondent in the appeal, that the machinery was not in working condition and that the appellant might be directed to calibrate the machinery and make them in working condition, before the amount agreed to be satisfied was parted with, for obtaining in the letter of subrogation. The learned counsel for the appellant point out that the course now suggested by the 1st respondent was not acceptable to the appellant, for the fact that huge investment may have to be made, to make the machinery to be in working condition and that the

appellant was having all the rights and liberties to cause the machinery to be sold as it is. It is stated that the machiney would be subjected to sale by way of Tender / Public auction, adding that the same will be effected with vide publicity.

9. After hearing both the sides, this Court finds that the appellant could be permitted to proceed with further steps for sale of the machiney in "as is where is condition", without shifting the same or dismantling the same from the premises, after wide publicity. Necessary publication in this regard, giving sufficient time, shall be effected atleast in 'two newspapers', inviting the interested parties to participate in the bid, which shall be by way of 'sealed tender' and also by 'auction'.

10. If the amount generated, is not sufficient to satisfy the outstanding liablility of the respondent Company plus the cost of publication as aforesaid in terms of the verdict already passed by the Madras City Civil Court (₹11,73,454/-), the balance amount shall be satisfied by the 1st respondent, to the appellant, as agreed in the course of the proceedings. The 1st respondent, upon such

satisfaction, will be entitled to have the same recovered from the 2nd respondent Company who happens to be the sole respondent in Arbitration Request No.15/2015 and the said liability shall stand added on to the subject matter of dispute in the Arbitration proceedings. Similarly, if the sale generates more income, the excess amount shall be retained by the appellant for the time being and the same shall be cause to be made available to the Arbitrator appointed to decide the subject matter of dispute in A.R. No.15/2015, for pursuing further steps. The sale proceedings as above shall be completed at the earliest at any rate, within 'two months' from today (23.09.2015).

11. Coming back to A.R. No.15/2015 after hearing Mr. K.P. Sreekumar, learned counsel for the appellant and Mr. Sandeep Ankarath, learned counsel for the respondent Company, Mr. Justice S. Siri Jagan (Former Judge, High Court of Kerala) is appointed as the Sole Arbitrator to consider and decide the issue and to pass an award in terms of 'Clause 25' of Annexure-I agreement. It is for the Arbitrator to fix the terms, the venue and time of arbitration.

The parties shall co-operate with the Arbitration proceedings. The amount if any satisfied by the petitioner in Arbitration Request No.15/2015 to the appellant in Arbitration Appeal No.22/2015 (on behalf of the respondent Company) as mentioned above shall be given credit to, while moulding the relief by the Arbitrator.

Both the matters are disposed of accordingly. The registry shall forward a copy of judgment along with a full text of Arbitration Request No.15/2015 and also Arbitration Appeal No.22/2015 to the Arbitrator for further steps.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
K. HARILAL
JUDGE

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