

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

O.S.A.No.102 of 2015

M/s.Subaya Constructions Company Limited,
rep. by its Director S.Meenakshi,
New No.21 (old No.26), Soundarapandian street,
AshokNagar,
Chennai-600 083. Appellant/1st Respondent

vs

1.M/s.P & C Constructions (P) Limited,
rep. by its Chairman and Managing Director
S.P.Ravishankar,

P & C Towers,
No.140, Perundurai Road,
Erode-638 011.

2.The Chief Engineer,
M/s.Tamil Nadu Water Supply and
Drainage Board,
Eastern Region, M.C.Road,
37, 1st Floor, Eswari Nagar,
Thanjavur - 513 004.

3.The Executive Engineer,
Tamil Nadu Water Supply and Drainage
Board Sewerage Division,
No.15, Samadh School street,
Near Samadh Hr. Sec. School,
Khaja Nagar,
Trichy - 620 020.

.... Respondents/Garnishees

Appeal filed under Clause 15 of the Letters Patent read with Order XXXVI, Rule 9 of Original Side Rules against the order made in A.No.721 of 2015, dated 27.4.2015 to pass an order prohibiting the 2nd & 3rd Respondent/Garnishees from making payment of a sum of Rs.6,54,96,217/- or any amount to the 1st Respondent and its agent or representative from receiving a sum of Rs.6,54,96,217/- or any amount from the 2nd & 3rd Respondent/Garnishees to deposit a sum of

Rs.6,54,96,217/- or any amounts to the Credit of the above application until disposal of the Arbitral Proceedings.

For Appellant .. Mr.B.Natarajan

For Respondents .. Mr.P.J.Rishikesh &
P.J.Sri Ganesh for R1

* * * * *

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Admit. Rule-nisi be issued.

2. Mr.P.J.Rishikesh, learned counsel accepts notice for the first respondent, as the other two respondents herein are Garnishees and are not required for adjudication in the present dispute.

3. M/s.Tamil Nadu Water Supply and Drainage Board/Second respondent floated a tender by tender notice dated 07.04.20103 for installation and commissioning of underground sewerage system for Tiruchirapalli City Corporation in the unserved areas of Srirangam, Golden Rock and part of Old Trichy Town and improving the existing system comprising of sewer lines, construction of new pumping station, pumping main, house service connection, augmenting the existing sewage treatment plant including civil, electrical, mechanical and all other allied works on Turnkey basis including maintenance for a period of five years, in which the appellant was successful. In the context of the project being large, the first respondent joined as sub-contractor and was included in the bid of the appellant for part of the projects from their inception apart from the other sub-contractors.

4. The appellant seems to have been not happy with the work of the first respondent under the contract and some communications inter se the parties ensued. This culminated the ultimate termination of the sub-contract by the appellant with the first respondent. Both the said parties have claim against each other.

5. Since the agreement inter se the parties contained the arbitration clause, the said clause was invoked. The first respondent also initiated proceedings in the form of A.No.721 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to "the said Act") seeking to secure the amounts which were liable to be received from the second and third respondents by the appellant. The first respondent, however pleaded

that without prejudice to the same, there was an admission of the liability by the appellant to the extent of Rs.1,80,28,295/- and thus, filed A.No.1600 of 2015 in the earlier application seeking deposit of the said amount. In this context, it may be noticed that as per the first respondent a sum of Rs.6,54,96,217/- is due to it.

6. All the applications were dealt with by the learned Single Judge in terms of the common order dated 27.04.2015, whereby the applications filed by the first respondent were dismissed. However, simultaneously, the learned Single Judge asked the appellant to furnish security to the tune of Rs.1,80,28,295/- within four weeks from the date of receipt of the order. This portion of the order with which the appellant is aggrieved is the subject matter of the present appeal.

7. When we issued notice on 09.06.2015, the portion of the impugned order to the extent directing furnishing of security was stayed.

8. We have heard the learned counsel for parties.

9. The admitted portion is that the Arbitral Tribunal has been constituted though the proceedings are stated not to have progressed much as in between, there were endeavours once again to resolve the disputes, but unsuccessfully.

10. The parties have claim against one another. A case for passing decree on admission has not been made out, which is obvious from the rejection of the applications filed by the first respondent. The amount stated to have been withheld by the appellant was to be adjusted against the loss suffered by them. The prayer in the nature of decree under Order 12, Rule 6 of the Code of Civil Procedure amounted to an interim award and has been held to be beyond the scope of Section 9 of the said Act.

11. In the aforesaid situation, there can be no question of the appellant providing security for the amount, more so as there is no case made out that in case of success before the Arbitral Tribunal, the first respondent would be deprived of the fruits of the success on account of the inability of the appellant to meet its liabilities. Furnishing of security, thus, in a way amounts to an order akin to attachment before judgment where there are claims and counter-claims yet to be adjudicated inter se the parties.

12. We are, thus, of the view that the direction to furnish security, cannot be sustained and is accordingly set aside and the appeal is allowed to the aforesaid extent, since that was the only aspect of impugned in this appeal. The parties are left to bear their own costs.

13. We would expect the Arbitral Tribunal to now expeditiously continue with the arbitral proceedings, so that the parties are able to see the result of their respective claims and counter-claims.

14. At the request of the learned counsel for the first respondent, we clarify that we are not in any way precluding the first respondent from making the claim for interim award or for an attachment of the amount, if there is material available requiring such an order subject, of course to the Arbitral Tribunal being inclined to do so.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bbr

Copy to:

The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

+1 cc to Mr.R.J.Rishikesh Advocate sr.43784

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