

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.2418 of 2016

Gail (India) Ltd.,
No.7 A, Kences Towers,
No.1, Ramakrishna Street,
North Usman Road,
T.Nagar, Chennai-600 017. ... Appellant/Respondent

versus

Tamil Nadu Civil Supplies Corporation,
Rep. by Managing Director,
No.12, Thambuswamy Road,
Kilpauk, Chennai-600 010. ... Respondent/Claimant

Appeal filed under Section 37(1) and (2) of Arbitration and Conciliation Act, 1996, to set aside the order in PMA/ZH/09/2016 passed by the Joint Secretary and Sole Arbitrator dated 21.04.2016 as confirmed by the order dated 09.08.2016 passed by the learned Arbitral Tribunal.

For Appellant : Mr. P.V.S.Giridhar for
M/s.Giridhar & Sai

For Respondent : No appearance

JUDGMENT

Gail (India) Limited, one of the parties to the arbitration proceedings, has brought the order dated 21.04.2016 made in PMA/ZH/09/2016 passed by the Joint Secretary and Sole Arbitrator directing the respondent/appellant herein not to take any adverse action against the claimant during the pendency of arbitration proceedings and another order dated 09.08.2016 passed by the learned Arbitral Tribunal, fixing the case on 09.11.2016 for further hearing.

2. Learned counsel for the appellant would submit that when the bank guarantee, furnished in favour of the appellant, is going to be encashed, the learned Arbitrator, who has seized of the vacate stay petition to recall its order dated 21.04.2016, without even hearing before passing any further order on the

vacate stay petition, has simply adjourned the matter. As a result, the appellant, in spite of having benefit of enjoying the bank guarantee, has been put under great prejudice.

3. Adding further, he would submit that even though the appellant was given the benefit of the encashment of bank guarantee during the pendency of the arbitration proceedings, the same may be permitted to be availed of, lest the purpose of giving bank guarantee will be of no use. Even otherwise, finally, in the event of passing an Award by the Arbitrator, the appellant is prepared to get the amount adjusted and therefore, there is no prejudice going to be faced by the respondent herein if the appellant is permitted to encash the same. This has been completely overlooked by the learned Arbitral Tribunal.

4. But this Court finds no justification to entertain the appeal for two reasons. Firstly, when the appellant is a party to the proceedings, they are duty bound to maintain status quo till final adjudication is reached by the Arbitrator in the present case. Secondly, keeping in mind, these legal provisions and the order dated 21.04.2016, the learned Arbitrator has directed the respondent/appellant herein, not to take any adverse action against the claimant during the pendency of the arbitration proceedings.

*5. Therefore, in my considered opinion, the impugned order dated 09.08.2016, fixing the case for further hearing on 09.11.2016, cannot be complained of by the appellant. However, learned counsel for the appellant requested this Court to direct the learned Arbitrator to take up the vacate stay petition. I find some merits on the request seeking to take up the vacate stay petition, which is pending for consideration. It is also made clear that directing the parties to maintain the status quo as stated at paragraph No.4 does not preclude the Arbitrator to take up the pending vacate stay petition and pass orders in the manner known to law. No Costs."

-s/d-

Assistant Registrar

*Corrected as per order
dated 04.11.2016 in CMA.2418/2016

-s/d-

Assistant Registrar (CCC)

dt: 07/11/2016

True Copy

Sub-Assistant Registrar

To

1.The Joint Secretary and Sole Arbitrator(To be Substituted to
Public Enterprises Bhawan (the order already despatched
Block No.14,Room No.314/315 (on 02/11/2016)
(GO Complex, Lodhi Road,
New Delhi 110 003

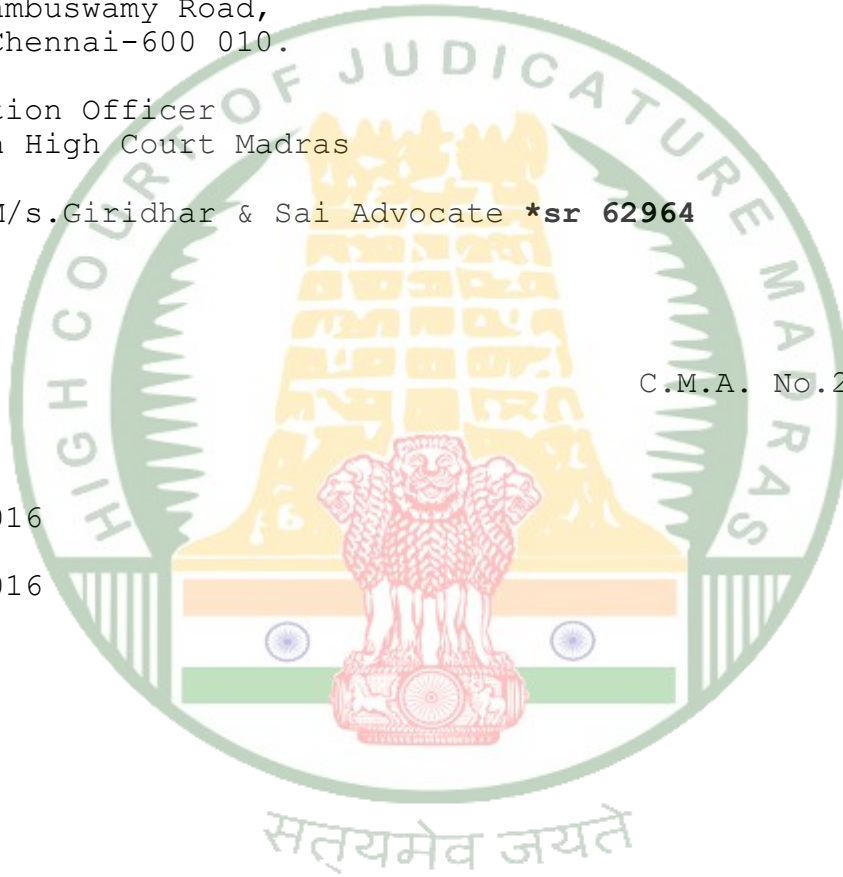
2.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambuswamy Road,
Kilpauk, Chennai-600 010.

3.The Section Officer
VR section High Court Madras

+1 cc to M/s.Giridhar & Sai Advocate *sr 62964

C.M.A. No.2418 of 2016

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