

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.12.2016**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

Application Nos.2283 and 2284 of 2016

in

C.S.No.256 of 2016

and W.M.P.No.11558 of 2016

in

W.P.No.13188 of 2016

Tamil Nadu Tourism Development
Corporation Limited
Tamil Nadu Tourism Complex
No.2, Wallajah Road
Near Kalaivanar Arangam
Chennai 600 002
rep.by its General Manager

.. Applicant in Application
Nos.2283 and 2284 of
2016 and first respondent
in W.M.P.No.11558 of 2016

vs

M/s.Spellbound
No.34, Elliot's Beach Road
Besant Nagar, Chennai 600 090
rep.by its Proprietor
Mr.K.N.Redin

.. Respondent in Application
Nos.2283 and 2284 of
2016 and petitioner in
W.M.P.No.11558 of 2016

The State of Tamil Nadu
rep.by its Secretary to the
Government, Tourism, Culture and
Religious Endowments Department
Fort St.George, Chennai 600 009.

.. 2nd respondent in
W.M.P.No.11558 of 2016

For Applicant : Mr.S.Parthasarathy
 in both the Senior counsel for
 applications Mr.K.S.Jeyaganeshan
 and R1 in
 W.P.No.13188
 of 2016

For Respondent: Mr.P.Wilson
 in both the Senior counsel for
 applications Mr.Richardson Wilson
 and petitioner in
 W.P.No.13188
 of 2016

For R2 in : Mr.S.T.S.Murthy
 W.P.No.13188 Government Pleader
 of 2016 Assisted by Mr.R.A.S.Senthilvel
 AGP

Mr.M.Kempraj
 Advocate Commissioner

ORDER

Heard Mr.S.Parthasarathy, learned Senior Counsel appearing for the applicant-Corporation, Mr.P.Wilson, learned Senior counsel appearing for the respondent/writ petitioner and Mr.S.T.S.Murthy, learned Government Pleader appearing on behalf of the State.

2. The parties are referred to hereunder, according to their ranking in the applications.

3. The Tamil Nadu Tourism Development Corporation is the applicant, who as a plaintiff, has filed the suit for recovery of a sum of Rs.1,08,40,760/- [Rupees one crore, eight lakhs forty thousand seven hundred and sixty only] from the respondent/defendant.

4. **Application No.2283 of 2016** has been filed by the applicant seeking a direction to the respondent to furnish security for the suit claim amount of Rs.1,08,40,760/- and **Application No.2284 of 2016** has been filed to attach the respondent's materials including wood, plastic, iron steel and other metals, machinery, movables, equipments, instruments, platforms, stages, GI sheets, angle sets, iron sheds and all such materials erected by the respondent for the purpose of organizing the 42nd India Tourist and Industrial Fair from Island Grounds, Chennai and to keep safe with a comprehensive all risk insurance on the goods at a Warehouse at respondent's own cost, till the disposal of the suit.

5. The applicant- corporation had floated a tender on 14.10.2015 for the 42nd India Tourist and Industrial Fair 2016. The offer of the respondent was negotiated for 59% revenue share in gate collection and on acceptance of the same, the applicant-corporation

awarded the order in favour of the respondent vide letter bearing No.50/FS/2015 dated 04.12.2015. An agreement was also executed on a non-judicial stamp paper and the respondent was called upon to remit the fixed rent of Rs.440 lakhs plus 14.5% service tax within a period of 7 days from the date of receipt of the award of contract, ie., 04.12.2015, in default, the earnest money deposit and performance security would be forfeited.

6. It is stated by the applicant-Corporation that having executed an agreement, the respondent alleged that the rental charge and share in the gate collection fixed by the applicant-Corporation as exorbitant and sought time till 09.12.2015 to pay the agreed rental and other charges. The applicant-Corporation sent a letter dated 17.12.2015 calling upon the respondent to settle the full amount immediately as per the tender conditions. In response to the same, the respondent replied on 22.12.2015 seeking time, to settle the entire dues, till second week of February 2016. As the time fixed for the conduct of the Trade Fair had to be commenced, the applicant-Corporation was unable to exercise the alternate option to terminate the contract and calling for fresh tenders.

7. It is further stated that the respondent vide its letter dated 05.01.2016 had offered to remit only the Trade Fair 2015 rental charges for the Trade Fair 2016. The petitioner had also expressed their unwillingness vide letter dated 11.01.2016 and called upon the respondent to pay the balance amount. Subsequently, a show cause notice dated 19.01.2016 was also sent to the respondent, setting out the violations committed by them. Pursuant to the show cause notice dated 19.01.2016, the respondent had replied that they had already remitted Rs.210 lakhs as against Rs.440 lakhs. The respondent also alleged to have agreed to settle the balance rental charges and service tax after all the adjustments with penal interest as per the conditions agreed. Even after that, the respondent is alleged to have not honoured the commitment. A final notice was issued by the applicant-Corporation dated 02.02.2016. But without responding to the said notice, the respondent sought for an extension of Fair period for four more days from 23.03.2016 to 27.03.2016. Therefore, the final notice was issued by the applicant-Corporation on 22.02.2016 directing the defendant to settle the rental charges of Rs.185 lakhs + service tax immediately, without further delay.

8. While so, the respondent seem to have approached this Court in W.P.No.11115 of 2016 seeking direction against the petitioner to reduce Rs.One Crore from the tender amount, out of Rs.440 lakhs as the respondent had suffered loss. Yet another writ petition in W.P.No.13188 of 2016 has been filed by the respondent/writ petitioner seeking a direction directing the respondents/ applicant-Corporation to permit them to dismantle and remove all the goods, movables, machinery etc., erected by them for the purpose of organizing the 42 India Tourism and Industrial Fair, 2016 from the Island Grounds, Chennai, apprehending that the substantial parts of the goods would be stolen if not removed immediately. In those writ petitions, a status quo order was passed by this Court on 07.04.2016. The applicant-Corporation further states that in the reply notice given by the respondent to their show cause notices, they have admitted their liability. Therefore, they should be directed to furnish security or bank guarantee or deposit the money in an escrow account equivalent to that of the suit claim made by the applicant-Corporation. It is further stated that the materials belonging to the respondent are also occupying substantial space in Island grounds thereby depriving the applicant-Corporation from utilizing the full space. The applicant-Corporation/plaintiff, therefore, have prayed for furnishing of security

for the suit claim of Rs.1,08,40,760/- and to attach those building materials, which include plastic items steel and other materials machinery, etc.

9. As mentioned above, the respondent, who is the defendant in the suit, as a writ has filed **W.P.No.13188 of 2016** seeking a mandamus directing the applicant-corporation to permit the respondent to dismantle and remove all the goods, movables, machinery, etc., erected for the purpose of organizing 42nd India Tourism and Industrial Fair, 2016 from the Island Ground, Chennai.

10. In **W.M.P.No.11558 of 2016**, the respondent/defendant, as a writ petitioner has also sought an order of ad-interim direction directing the applicant Corporation to permit them to dismantle and remove all the goods, machinery etc., from the Island grounds.

11. In **W.M.P.No.12164 of 2016**, a Commissioner was sought to be appointed to ascertain the extent of damages done to the respondent/defendant's goods, movables, machinery, etc., lying on the Island grounds. Accordingly, Mr.M.Kempuraj, Advocate was appointed as a Commissioner, who has filed his report dated 21.04.2016. As

per the report of the Advocate Commissioner, the total damage as on date of filing of the report was Rs.20,19,518/-. The Advocate Commissioner also has filed a detailed report enclosing the annexures for arriving at the said sum. The respondent-defendant/writ petitioner also had filed their objection to the report of the Commissioner stating that for the damages suffered by them to the tune of Rs.One crore, the Commissioner had assessed only at Rs.20,19,518/-.

12. Be that as it may, it has to be seen from the above facts,

(i) Whether the respondent/defendant in the suit has to be directed to furnish security for the suit claim ?

(ii) Whether the writ petitioner/defendant should be permitted to remove the materials used for erecting structures for the 2016 Trade Fair from the Island grounds.

13. The applicant-Corporation has also filed another application for attachment of the materials belonging to the respondent/defendant lying on the Island Ground in the event of the respondent/defendant not furnishing security to the suit claim.

14. Admittedly, the respondent-company is a sole proprietorship company registered under the provisions of the Companies Act, trading in the business of organizing large scale events and Exhibitions as well as running amusement parks. It is also stated that they have employed sub contracts for infrastructure works for furnishing carpentry, steel structures etc. The contention of the learned Senior Counsel appearing for the applicant-Corporation is that the applicant being a corporation, it is always available in the event of the respondent/defendant succeeding in the writ petition, whereas, the respondent/defendant being a proprietaryship concern, it will be difficult for them to go behind them, in the event of their success in the suit.

15. It is seen that the respondent/defendant is dealing in organizing large scale events and exhibition for which, make shift materials are required. The Trade Fair in Chennai being a major event, spread over a large area, admittedly, the respondent had utilized the services of the other sub contractors and other temporary structures and erection materials. Unless those materials are allowed to be removed by the respondent/defendant, their further business would be affected, which would cripple the company. The Advocate

Commissioner also has assessed the damages as on April 2016 at Rs.20,19,518/- vide his report dated 21.04.2016.

16. The claim of the applicant-Corporation in the suit is to an extent of Rs.1,08,40,760/-, the said claim is the balance remittance payable to the applicant-Corporation by the respondent/defendant with interest. The actual amount payable can be ascertained only after the trial is over. The respondent/defendant also has a counter claim to make against the applicant-Corporation and it is also stated that they have filed a separate suit.

17. However, considering the interest of the respondent/defendant whose materials, including the materials of the subcontractors are lying idle, without any use, has to be released. At the same time, the claim of the applicant-Corporation/plaintiff also has to be secured.

18. Accordingly, the following order is passed:

(i) The applicant-Corporation is directed to permit the respondent/defendant/writ petitioner to dismantle and remove all the goods, movables, machinery, etc., belonging to them, lying on the

Island Grounds, on the respondent-company/defendant , furnishing a bank guarantee for the suit claim.

(ii) Similarly, the applicant-Corporation/plaintiff in the suit, who is the respondent in the writ petition, is directed to deposit a sum of Rs.30,00,000/- [Rupees thirty lakhs only] {Rs.20,19,518/- as assessed by the Advocate Commissioner and Rs.10 lakhs approximately towards temporary assessment of the future damages that has been caused due to natural calamity, wear and tear and also theft} to the credit of the W.P.No.13188 of 2016 before the Registrar General, High Court, Madras within a period of two weeks from the date of receipt of a copy of this order.

19. With the above direction, Application Nos.2283 and 2284 of 2016 in C.S.No.256 of 2016 and W.M.P.No.11558 of 2016 in W.P.No.13188 of 2016 are disposed of.

23.12.2016

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Index: Yes/No

Internet: Yes

Note: Issue order copy by 27.12.2016

PUSHPA SATHYANARAYANA,J.,

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Application Nos.2283 and 2284 of 2016
in
C.S.No.256 of 2015
and W.M.P.No.11558 of 2016
in
W.P.No.13188 of 2016

23.12.2016

C.S.No.256 of 2016
and
W.P.Nos.13188 and 11155 of
2016

PUSHPA SATHYANARAYANA,J.,

Though the matter was Specially Ordered to be posted before this Court, in view of the urgency expressed, it was taken up and orders have been passed. Registry is directed to obtain appropriate orders from My Lord the Hon'ble the Chief Justice and post the main suit along with connected writ petitions, before some other learned Judge.

23.12.2016

vj2

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