

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.No.113 of 2016

M/s.Selkan Consulting Pvt. Ltd.,
rep. by one of its Directors Philip Vaseekaran,
New No.5, Old No.3,
9th Cross Street, Indira Nagar,
Adyar, Chennai-600 020. .. Appellant

vs

1.M/s.Aircel Cellular Ltd.,
rep. by its Strategic Unit Head,
5th Floor, Spencers Plaza,
No.769, Anna Salai,
Chennai-600 006.
2.Justice E.Padmanabhan,
Retired Judge, High Court, Madras,
No.11, Madha Church Road,
Chennai-600 028. .. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules
read with Clause 15 of Letters Patent against the order made in
A.No.1013 of 2016 in O.P.No.62 of 2016, dated 14.03.2016.

Application praying that this Court may be pleased to pass an
order permitting the Applicant to withdraw a sum of Rs.49,08,239/-
(Rupees Forty nine lakhs eight thousand two hundred and thirty nine
only) which amount is lying in the credit of the petition in
OP.No.62/2016, pending disposal of the main petition.

For Appellant .. Mr.Rathina Asohan

For Respondents .. Mr.Satish Parasaran
Senior Counsel for
Mr.A.M.Venkatakrishnan for R1

* * * * *

JUDGMENT

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

2. Mr.A.M.Venkatakrishnan, learned counsel accepts notice for respondent No.1.

3. At the request of the learned counsel for parties, the main appeal itself is taken up for final disposal.

4. The limited issue raised in this appeal is arising from the order passed by the learned Single Judge dated 14.03.2016 in A.No.1013 of 2016 in O.P.No.62 of 2016. The appellant has got the Award dated 06.06.2015 in its favour. The first respondent has filed the objections and has deposited the principal amount in Court of Rs.49,08,239/-. Pending consideration of the objections, the learned Single Judge vide the impugned order has permitted the appellant to withdraw the principal amount, but subject to providing security.

5. In support of his contention, the learned counsel for the appellant has referred to the letter issued by the first respondent post Award, which reads as under:-

WITHOUT PREJUDICE

21st January 2016

Selkan Consulting Private Limited,
New No.5, Old No.3, 9th Cross Street,
Indira Nagar,
Chennai-600 020.

Sirs,

Sub: Award of Arbitration

Ref: Execution Petition No.94 of 2015

This has reference to the discussions we had today with you / your counsels (Mr.Rathina Asohan, Advocate) on the award of arbitration dated 6th June 2015 and E.P. attachment order dated 20th January 2015 (without any copy served on us).

We understand that basis the Execution Petition filed by you in the Honourable High Court of Judicature at Madras, a warrant has been issued by the Honourable Court Master (Madras High Court) attaching the movable properties of the Company for the settlement of the arbitration award of Rs.49,08,239 together with interest of

Rs.7,24,536.76 and further interest of Rs.1,89,605.94, totalling Rs.58,22,381.70.

As discussed and agreed with you, we undertake to pay an amount of Rs.49,08,239 being the award amount (principal component) within 7 working days from the date of this Undertaking and also without prejudice to our legal rights and remedies for the rest of the Claim.

For AIRCEL LIMITED
Sd/- xxxx
S.Herbert
Circle Head - Administration

Copy to:
The Honourable Master, High Court of Madras.

6. The purport of the aforesaid letter is quite clear that the first respondent was willing to make the payment of the awarded amount in so far as the principal component was concerned from the date of the letter and also without prejudice to their legal rights and remedies qua the rest of the claim. The fact remains that the amount was not paid despite this letter and it is only in the Court proceedings that the principal amount has been deposited.

7. The learned Senior Counsel for the first respondent sought to contend that the top of the letter contains the endorsement "without prejudice". That is true. But as to under what context that phrase is used is obvious from the last paragraph itself - "without prejudice to our legal rights and remedies for the rest of the Claim". There is no quibble over the principal payment. We are thus of the view that the appellant cannot be deprived of its dues in this manner and is thus permitted to withdraw the amount, subject to their furnishing an undertaking for restitution of the amount in case it is ultimately found in the proceedings that even some part of the principal amount is not liable to be paid.

8. The impugned order is modified to the aforesaid extent and the appeal is accordingly allowed, leaving the parties to bear their own costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

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

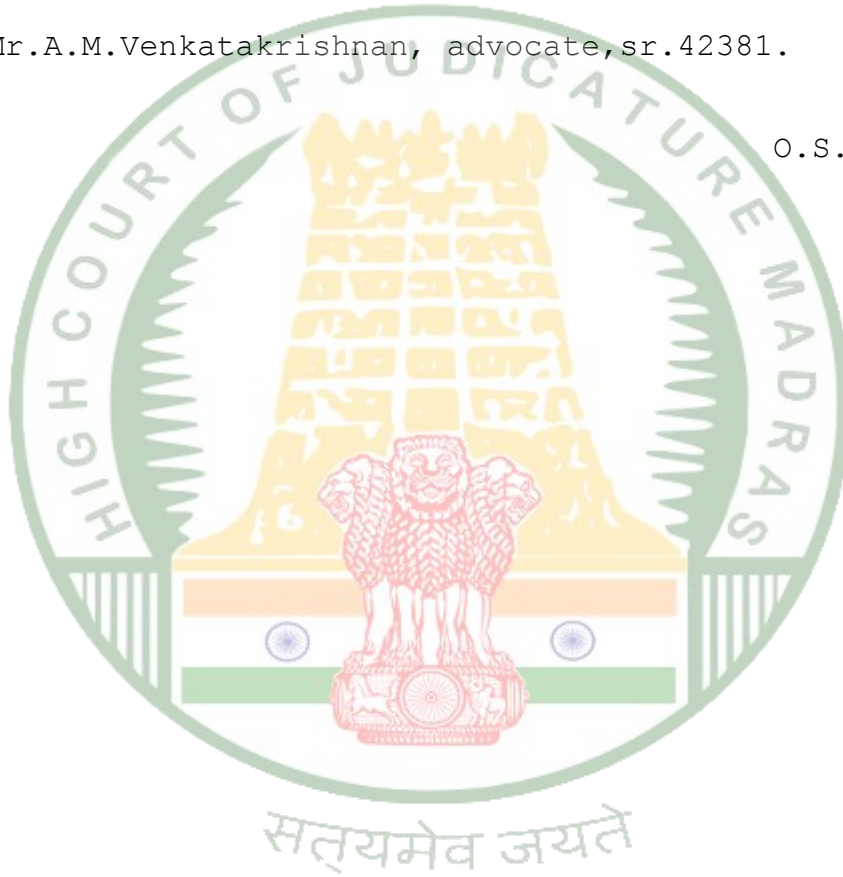
2.Justice E.Padmanabhan,
Retired Judge, High Court, Madras,
No.11, Madha Church Road,
Chennai-600 028.

+1 cc to mrs.Rathina Asohan, Advocate,sr.42262

+1 cc to Mr.A.M.Venkatakrisnan, advocate,sr.42381.

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O.S.A.No.113 of 2016



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