

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

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

O.S.A.No.134 of 2012

M/s.Kotak Mahindra Bank Ltd.,
No.3, Dass India Towers, 2nd Floor,
2nd Line Beach, Chennai 600 001.
rep. by its Assistant Manager (Legal)
K.Manjula Balaji ... Appellant

versus

1.R.Manukumar
2.Jyothi Rani ... Respondents

Appeal filed under Order 36 Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent Act, against the Order and Decretal Order dated 14.03.2012 passed in A.No.1042 of 2012 in A.No.2536 of 2011.

For Appellant : Mr.E.O.M.Prakash

For Respondents : Mrs.Chithirai Gomathy
for Mr.R.N.Amarnath
for R.1 and R.2

J U D G M E N T

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

The appeal arises from the impugned order dated 14.03.2012 dismissing the applications filed by the appellant/bank under Section 9 of the Arbitration and Conciliation Act, 1996 seeking security.

2. The transaction in question relates to a construction of Crane and it is the case of the appellant that some part payments towards instalments have not been made, though

undisputedly, substantial payments have been made. The security sought was for a sum of Rs.3,28,215.30. This prayer has been declined by the impugned order.

3. We do not consider it necessary to deal with various aspects forming subject matter of the adjudication by the learned Single Judge, since we are informed that subsequently, award has been passed in favour of the appellant. We are unable to accept the plea of the learned counsel for the appellant that there is any reason to apprehend that the observation made in the impugned order would in any manner affect the execution proceedings qua the award, since the impugned order is passed on a prima facie view of the matter at an interlocutory stage. It is akin to say that the observation made in an interim injunction application would prejudice the suit - something not palatable.

4. We are thus of the view that it is for the respective parties to take recourse to legal remedies as are available to them, keeping in mind the fact that an award already stands passed in favour of the appellant.

5. Learned counsel for the appellant states that the apprehension arises from the direction passed in the impugned order. The second direction relates to any claim to be made by the respondent against the bank within six months from the date of the order, but we are informed that the respondent has not claimed any amount.

6. Insofar as the third and fifth directions are concerned, keeping in mind the nature of the proceedings in seizin before the learned Single Judge, no such direction could be issued.

7. Those directions are thus set aside.

The Original Side appeal is allowed to the aforesaid limited extent, leaving the parties to bear their own costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

ksr

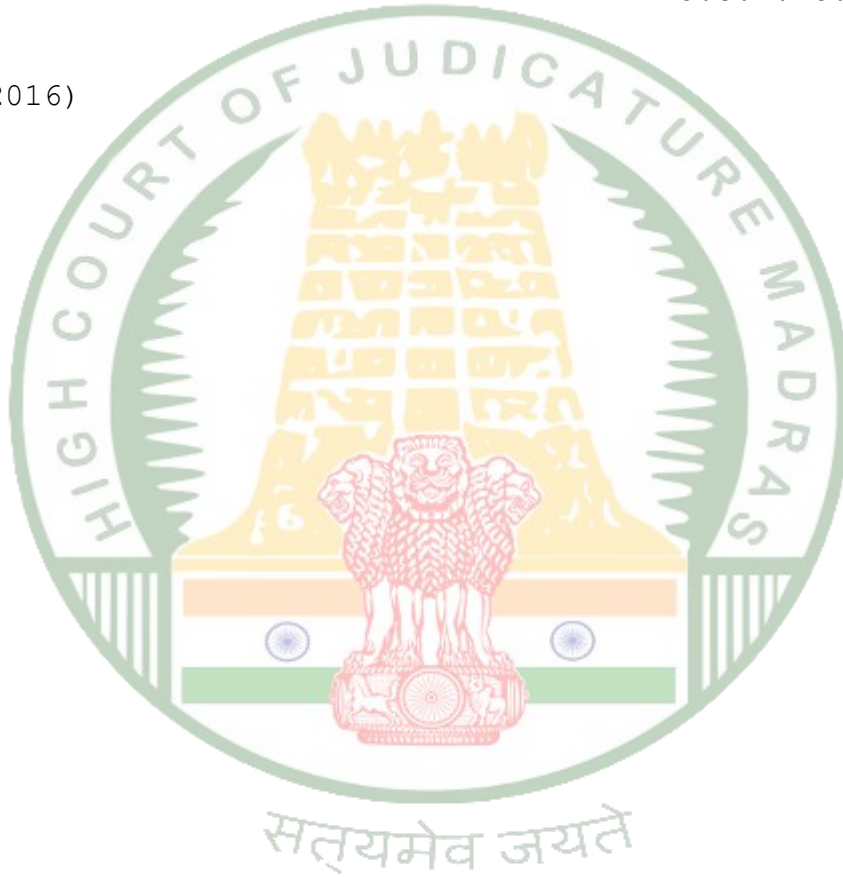
To

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

+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.53548
+2cc's to Mr.Ramalingam & Associates, S.R.No.53580

O.S.A.No.134 of 2012

CTR(CO)
CA(29/09/2016)



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