

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.23 of 2016
and
CMP.No.2539 of 2016

M/s.Pathfinder Software Solutions Pvt. Ltd.,
No.6, 17th Avenue,
Harrington Road,
Chetput, Chennai-600 031. ... Appellant/Petitioner

Vs.

Westcon Middle East Limited,
Regd. Office at JB-6, Jebel Ali Free Zone,
P.O.No.17124, Dubai, UAE,
rep. by its Power of Attorney
Regi Tom Antony ... Respondents/Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side
Rules read with Clause 15 of Letters Patent against the order
made in Company Application No.1139 of 2014 in Company Petition
No.222 of 2012, dated 11.01.2016.

For Appellant .. Ms.Hema Muralikrishnan

For Respondent .. Mr.Dhruva Anand. Samy

JUDGMENT

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

The learned counsel for the appellant fairly stated that
what she seeks us to exercise is mercy jurisdiction. In
commercial matters, however, such mercy has its own limitation.
The appellant is facing a winding up proceedings. It is
claimed that they have entered into some contracts which hold
out prospects for improvement of its business and thus, a sum of
Rs.5.00 lakhs has been paid today and it is prayed that the
balance of Rs.7.50 lakhs, which was required to be paid on or

before 22nd January, 2016, should be permitted to be paid in three equal monthly instalments of Rs.2.50 lakhs each payable on or before the 7th of each succeeding month i.e. March, April and May.

2. The learned counsel for the respondent initially had some hesitation because of the past record of the appellant in this behalf not being palatable, but he finally agreed to this order with the condition that the appellant will make payments of the remaining amount also as per some schedule.

3. We made the appellant once again aware of the fact that payments have to be made in equivalent of US Dollars and thus, any delay will only increase their liability, as the Dollar appears to be climbing up. The respondent cannot be expected to wait indefinitely on payment of Rs.7.50 lakhs, as a little more than 50% would have been paid of the total amount due.

4. The learned counsel for the appellant states that the appellant and the respondent would sit together and work out the schedule of payments with the requirement that if the appellant still does not adhere to the schedule, no further relaxation would be sought for and the appellant would face the consequences of the winding up order.

5. We are of the view that so far as the impugned order is concerned, the same stands modified by our order passed today and thus, nothing survives in the appeal and accordingly, the appeal is disposed of. No costs. Consequently, CMP.No.2539 of 2016 is closed.

6. However, in order to ensure that the respondent does not face this position again, it would be appropriate to fix the monthly schedule of payments in rupees convertible into Dollars on the date of payment. We, thus, put to the learned counsel for the appellant that the monthly instalment of Rs.2.50 lakhs per month should continue to be paid till the liquidation of the entire liability, something which is acceptable to the respondent. The learned counsel for the appellant however requests for some time to obtain instructions.

7. For settlement purpose, let the matter be listed on 09.03.2016 and the Managing Director of the appellant shall remain personally present in Court on that date.

bbr

Sd/-

Asst.Registrar

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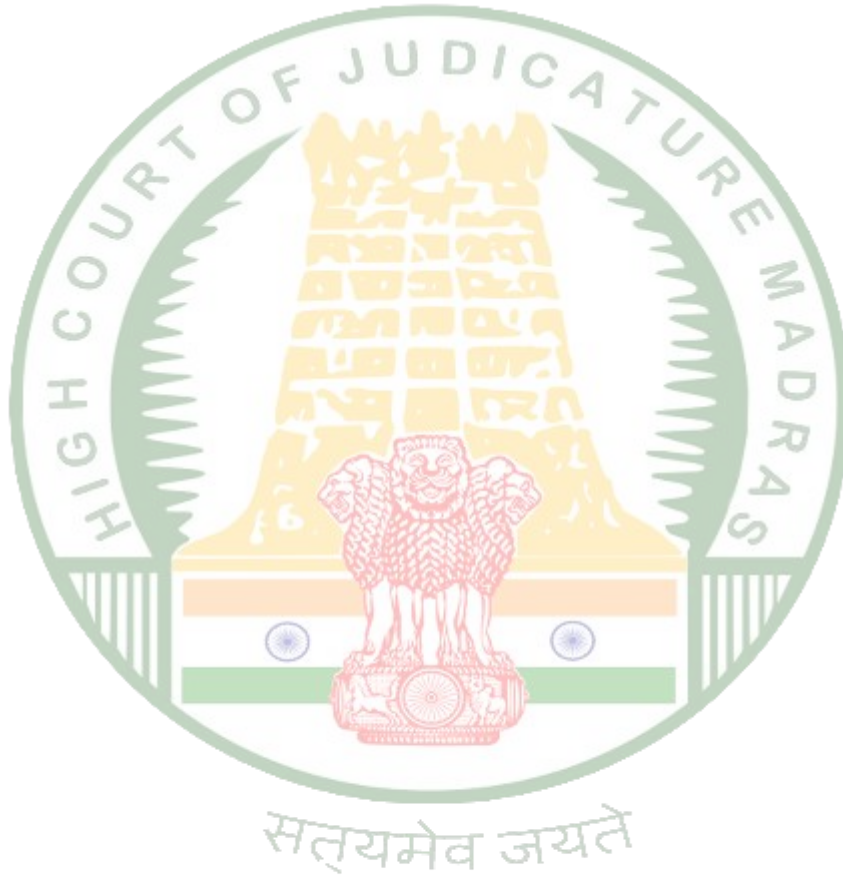
Sub Asst. Registrar

To

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

KR/26/2/16

O.S.A.No.23 of 2016



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