

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice V.PARTHIBAN

W.A. No.696 of 2016 and
CMP No.9153 of 2016

1. The Chairman-cum-Managing Director,
Tamil Nadu Magnesite Limited,
5/53, Omalur Maind Road,
Jahir Ammapalayam Post,
Salem-636 302.

2. The Board of Directors,
Tamil Nadu Magnesite Limited,
5/53, Omalur Maind Road,
Jahir Ammapalayam Post,
Salem-636 302.

... Appellants

Vs.

I.Jeyarajhan

...Respondent

Writ Appeal is filed under Clause 15 of the Letters Patent,
against the order dated 12.08.2015 in W.P.No.26901 of 2014
passed by the learned single Judge of this Court.

WP.No.26901/2014:Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus to call for the records relating to the proceedings of
the second respondent dated 22.9.2014 in Ref.A-8(8)/2011-12/6407
confirming the order of the first respondent dated 2.7.13 made
in Lr.Ref.No.A-8(8)-2010-11 quash the same and direct the
respondents to fully refund the security deposit of Rs.5 13 940/-
and the entire transport charges of Rs.3 89 075 and in total
Rs.9 03 915/-

For Appellants : Mr. M.R.Raghavan

For Respondent : Mr.M.Ganesh for
Mr.K.Rajasekaran
JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This Writ Appeal has been directed against the order of the learned single Judge, dated 12.08.2015 in W.P.No.26901 of 2014, in and by which, while setting aside the proceedings of the second appellant dated 22.9.2014, confirming the order of the first appellant dated 2.7.2013, directed the appellants to refund the security deposit as well as 50% transport charges to the respondent herein.

2. The respondent was awarded with a contract by the first appellant for supply of Furnace Oil for a period from 1.6.2010 to 31.5.2011. During the process of contract, there was a complaint on 25.1.2010 that the respondent had supplied contaminated oil. Consequently, after issuing a show cause notice on 25.1.2011 and on consideration of the reply of the respondent, by proceedings dated 2.2.2011, the second respondent terminated the contract. Aggrieved by the same, the respondent approached the Arbitral Tribunal, which on consideration of the material placed before it, passed an award revoking the order of termination, permitted the respondent to continue his contract, subject to certain conditions. Pursuant to the same, it appeared that the respondent continued the contract till the expiry of the contract period, i.e. 31.5.2011. However, the first appellant by proceedings dated 25.5.2011, extended the contract period by another three months till 31.8.2011. However, since no work of transporting the furnace oil after 31.6.2011 was allotted to the respondent, the contract had virtually come to end on and from 31.6.2011. Thereafter, the respondent has sought for refund of security deposit to the tune of Rs.5,13,940/- and the freight charges of Rs.3,89,975/-. Despite several requests made by the respondent, the amount was not refunded. Later, pursuant to the directions of this Court, the first appellant passed orders, stating that the contaminated furnace oil was transported on 8.1.2011, invoking tender document clauses, security deposit and 50% of the transport charges were ordered to be forfeited. Aggrieved by the same, the respondent preferred an appeal before the Board of Directors/the second respondent herein. By proceedings, dated 22.9.2014, the appeal authority also confirmed the order of the second respondent and dismissed the appeal. Challenging the same, the respondent has approached this Court by filing a writ petition in W.P.No.26901 of 2014.

3. After adverting to the contentions raised by both parties, while declining the issue of maintainability of the writ petition raised by the appellants, the learned Judge, has categorically held that since the termination order has already been revoked by the Arbitral Tribunal, which has become final

and even after expiry of the contract, the respondent was permitted to continue the contract and without any basis, withholding the security deposit and transport charges by the appellants was not justified and hence, accordingly directed the appellants to refund the said amounts. Questioning the order of the learned single Judge, the appellants have come forward with the present appeal.

4. Having hearing the learned counsel, who reiterated their contentions put forth before the learned single Judge and having gone through the entire facts and circumstances, we do not find any infirmity in the order of the learned Judge in order to interfere with the same. Admittedly, as against the termination order, dated 2.2.2011 on the ground that the respondent had supplied contaminated oil, already Arbitral Tribunal passed award, revoking the order of termination, permitted the respondent to continue the contract, subject to certain condition, which, the respondent had also carried out. As against the said award of the Arbitral Tribunal, the appellants have not preferred any appeal and allowed it as having become final. Therefore, if at all, even after the award, the appellants had still any issue as regards the so-called contaminated oil alleged to have been supplied by the respondent, the appellants ought to have intimated the respondent about their action in forfeiting the security deposit and transport charges on the said aspect. It is to be noted that even after expiry of the contract period, the first appellant permitted the respondent to continue the contract by extending the period of contract by three more months. Having remained silent over the issue and also having permitted the respondent to continue with the contract even after expiry of the contract period, the appellants are not justified in withholding the security deposit and transport charges based on the issue which was already reached a finality. In such view of the matter, the learned Judge has rightly dealt with the issue and passed a well considered order, which, we are of the view, is not required any interference.

5. Accordingly, the Writ Appeal fails and it is dismissed. No costs. The appellants are directed to comply the order of the learned Judge, without any further delay. Consequently, connected CMP is closed.

-s/d-
Assistant Registrar

True copy

Sub-Assistant Registrar

To

1. The Chairman-cum-Managing Director,
Tamil Nadu Magnesite Limited,
5/53, Omalur Maind Road,
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Salem-636 302.

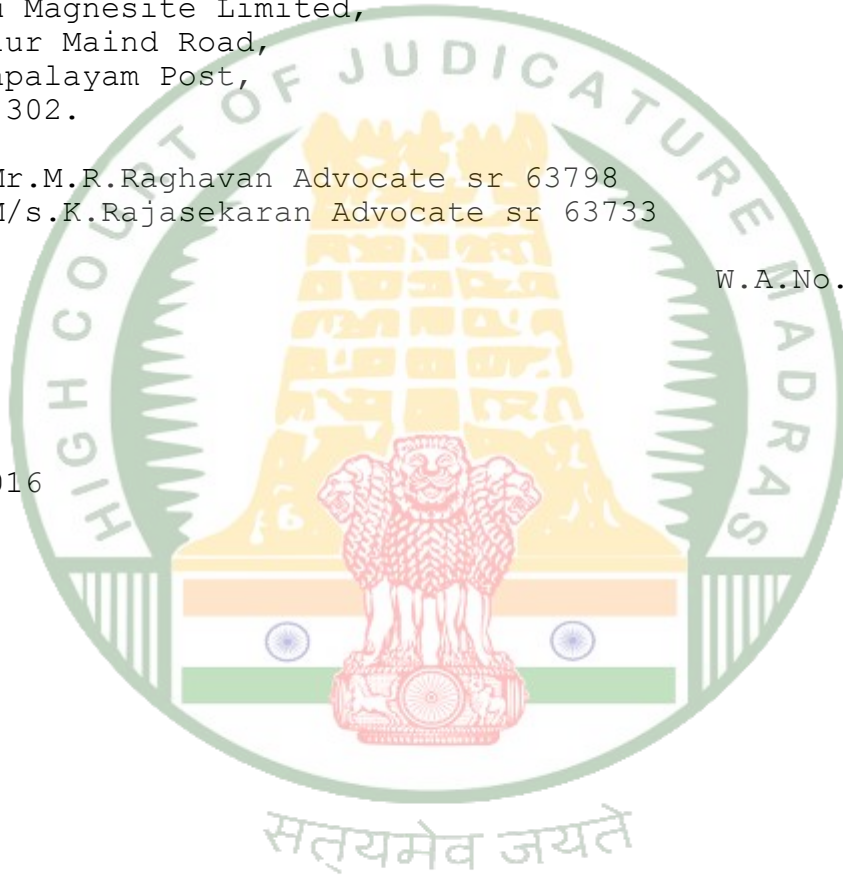
2. The Board of Directors,
Tamil Nadu Magnesite Limited,
5/53, Omalur Maind Road,
Jahir Ammapalayam Post,
Salem-636 302.

+1 cc to Mr.M.R.Raghavan Advocate sr 63798

+1 cc to M/s.K.Rajasekaran Advocate sr 63733

W.A.No.696 of 2016

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