

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.2851 of 2017 and  
C.M.P.No.16302 of 2017

Board of Trustees Chennai,  
Chennai Port Trust,  
rep by its Chairman,  
No.1, Rajaji Salai, Chennai - 1. .... Appellant

Vs.

Chennai Bunkering Terminal Private Limited,  
"Neeladri", No.9, Cenataph Road,  
Alwarpet, Chennai - 600 018. .... Respondent/Claimant

Civil Miscellaneous Appeal filed under Section 37(1) of Arbitration and Conciliation Act, 1996 against the interim order dated 11.02.2017 on the file of the Sole Arbitrator Mr.A.Balraj, I.A.S., (Retd.).

For Appellant : Mr.P.Wilson, Senior Counsel  
for Mr.R.Karthikeyan

For Respondent : Mr.P.S.Raman, Senior Counsel  
for Mr.V.P.Raman

J U D G M E N T

Challenging the order dated 11.02.2017 passed by the then Sole Arbitrator Mr.A.Balraj, I.A.S., (Retd.), the Chennai Port Trust has filed the above appeal.

2.To resolve the dispute between the parties, the matter was referred to the Sole Arbitrator. Before the Arbitrator, the respondent sought for interim stay of the operation of the Termination Notice dated 31.10.2016 issued by the appellant Chennai Port Trust pending the arbitral proceedings. By order dated 05.11.2016, the learned Arbitrator granted an order of interim stay, which was subsequently made absolute by order dated 11.02.2017, which is under challenge in this appeal.

3.Though the interim order was passed by the Arbitrator as early as on 05.11.2016, the appellant chose to file the appeal,

challenging the interim order passed by the Arbitrator, only in the month of July 2017. That apart, the learned senior counsel on either side submitted that the Sole Arbitrator, who was conducting the arbitral proceedings has recused himself from the proceedings and after that, the parties had not appointed any Arbitrator to decide the dispute between the parties.

4. When the matter was taken up for hearing, Mr.P.Wilson, learned senior counsel appearing for the appellant and Mr.P.S.Raman, learned senior counsel appearing for the respondent submitted that the parties had exchanged the list of Arbitrators to be appointed in the place of the earlier Arbitrator Mr.A.Balraj, I.A.S., (Retd.). The appellant has suggested three names of Hon'ble Retired Judges of Madras High Court and the respondent has given three names of technical experts for appointment as Sole Arbitrator.

5. After deliberation, the learned senior counsel on either side submitted that they are agreeable for appointing Hon'ble Mr.Justice K.Venkataraman, Retired Judge of Madras High Court as Sole Arbitrator to proceed with arbitral proceedings in the place of the earlier Arbitrator. The learned senior counsel on either side submitted that the Sole Arbitrator is at liberty to fix his remuneration.

6. Mr.P.S.Raman, learned senior counsel submitted that since the issue involved in the arbitral proceedings relate to some technical aspects, the Arbitrator may be given liberty to get the assistance of an expert under Section 26 of the Arbitration and Conciliation Act.

7. In view of the submission made by the learned senior counsel, in the case of the Arbitrator finding it necessary to get the assistance of an expert, it is open to the Arbitrator to get the assistance of an expert under Section 26 of the Arbitration and Conciliation Act.

8. So far as the impugned order is concerned, as already stated, the interim order was passed on 05.11.2016 and it is in force for more than a year now and therefore, I do not find any reason to disturb the order at this stage and in the case of the impugned order being disturbed, it would prejudice the respondent.

9. Mr.P.Wilson, learned senior counsel appearing for the appellant submitted that the then Arbitrator had given observations against the appellant, which would affect the arbitral proceedings in the future.

10. Taking note of the submission made by the learned senior counsel, I make it clear that the Arbitrator appointed in this

proceedings is requested to decide the matter independently, without being influenced by any of the observations made in the stay petition filed by the respondent by the Erstwhile Arbitrator. I request the Arbitrator to commence the arbitration proceedings at the earliest and I also request the Arbitrator to complete the arbitral proceedings within six weeks' time.

11.The appellant and the respondent are directed to co-operate for the early disposal of the arbitral proceedings.

12.For the reasons stated above, I am not interfering with the order passed in the stay petition. The appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Mr. Justice K. Venkatraman  
Retired Judge of Madras High Court  
L. Block, No 125 East Anna Nagar  
Chennai 600 102.

2. Mr.A. Balraj  
I.A.S. (Retd..)  
Sole Arbitrator  
76, J. Block, Behind 14 shops,  
Anna Nagar(East)  
Chennai 600 102.

+1 CC to Ms.P. Karthikeyan, Advocate sr 85295.

+1 CC to Ms.V.P. Raman, Advocate sr 85251

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SP(04/12/2017)