

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 15TH DAY OF FEBRUARY 2017

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

A.Nos.6064 and 6064 of 2016

in

A.No.4631 of 2016

in

O.P.No.514 of 2016

O.P.No.514 of 2016

In the matter of the
Arbitration and Conciliation
Act, 1996

and

In the matter of Dispute
between M/s.SP Enterprises,
and M/s.Madras Fertilizers
Ltd., in respect of agreement
date 23.06.2004.

1.The General Manager (P&A)
Madras Fertilizers Ltd.,
Post Bag No.2, Manali,
Chennai 600 068.

2.The Chief Manager (P&A)
Madras Fertilizers Ltd.,
Post Bag No.2, Manali,
Chennai 600 068.

..Petitioners

Vs

M/s.S.P.Enterprises
Rep. by its Proprietor,
Mr.A.Alagasen,
Sriram Avenue,
No.1 A, Annai Velankanni Nagar,
Madhavaram Milk Colony
Chennai 600 061.

..Respondent

Appln.No 4631 of 2016

1.The General Manager (P&A)
Madras Fertilizers Ltd.,
Post Bag No.2, Manali,
Chennai 600 068.

2.The Chief Manager (P&A)
 Madras Fertilizers Ltd.,
 Post Bag No.2, Manali,
 Chennai 600 068. ..Applicants/ Petitioners

Vs

M/s.S.P.Enterprises
 Rep. by its Proprietor,
 Mr.A.Alagasen,
 Sriram Avenue,
 No.1 A, Annai Velankanni Nagar,
 Madhavaram Milk Colony
 Chennai 600 061. ..Respondent/Respondent

A.Nos. 6064 and 6065 of 2016

M/s.S.P.Enterprises
 Rep. by its Proprietor,
 Mr.A.Alagasen,
 Sriram Avenue,
 No.1 A, Annai Velankanni Nagar,
 Madhavaram Milk Colony
 Chennai 600 061. ..Applicant/Respondent

Vs

1.The General Manager (P&A)
 Madras Fertilizers Ltd.,
 Post Bag No.2, Manali,
 Chennai 600 068.

2.The Chief Manager (P&A)
 Madras Fertilizers Ltd.,
 Post Bag No.2, Manali,
 Chennai 600 068. ..Respondents/ Petitioners

Appln.No.6064 of 2016

Application praying that this Hon'ble Court be pleased to Vacate the interim stay granted by this Hon'ble Court in Application No.4631 of 2016 dated 15.09.2016.

Appln.No.6065 of 2016

Application praying that this Hon'ble Court be pleased to direct the Registrar General to en-cash the said fixed deposit and to pay to the Applicant the said sum of Rs.14,67,000/- (Rupees fourteen lakhs Sixty Seven thousand only) together with further accrued interest pending disposal of the above O.P.

This Application coming on this day before this Court for hearing the court made the following order:

Heard Mr.S.Krishnasamy, learned counsel appearing for the applicant and Mr.B.Manoharan, learned counsel appearing for the respondents/petitioners.

2. The main Original Petition has been filed by the respondents challenging the arbitral award dated 22.02.2016 passed by the sole Arbitrator, in a claim statement filed by the applicant herein for payment of the amount, towards food and catering supplies effected by the applicant to the canteen run by the respondents.

3. At the time, when the application for stay in A.No.4631 of 2016 filed by the respondents herein was entertained, interim order was granted, subject to the condition that the respondents herein deposit a sum of Rs.15,00,000/- within a time frame and this amount was directed to be invested in an interest bearing account. This direction has been complied with by the respondents.

4. The applicant has filed applications in A.Nos.6064 and 6065 of 2015 to vacate the order of interim stay and for payment out of the amount lying in the deposit.

5. From the facts and circumstances of the case, it is seen that the applicant is a contractor, supplying food and eatable items to the canteen. *Prima facie*, this Court is of the view that the arbitral Award is a reasoned Award and the correctness of which, be tested in the main Original

the Arbitration and Conciliation Act, 1996.

6. Further, on *prima facie* perusal of the grounds raised in the main Original Petition, this Court is of the view that the grounds are factual and therefore opines that the balance of convenience would be in favour of the applicant by permitting him to withdraw the amount, which is lying in deposit, subject to the condition in the event, the respondents herein succeeds in the main Original Petition, the applicant shall repay the amount which has been withdrawn, together with simple interest at the rate of 8% p.a. from the date of withdrawal till the date of repayment.

7. The learned counsel for the respondents submit that if the applicant is permitted to withdraw the amount lying in deposit, the interest of the respondents may be protected and the applicant may be directed to furnish a Bank Guarantee. The contract awarded to the applicant was for a period of two years from 09.06.2004 to 03.06.2006, but stood terminated during March 2006.

8. The applicant's contention is that the respondents unauthorisedly and illegally withheld payments thereby making it impossible for the applicant to pay his suppliers, salary to his employees and could not maintain the buffer stock. As a consequence, dispute arose and

matter was referred for arbitration to the Chairman and Managing Director of the respondents.

9. The learned Arbitrator though framed the issues, did not proceed further. Therefore, the applicant filed O.P.No.526 of 2008 under Section 11 of the Act for appointment of an Arbitrator. The petition was allowed on 27.02.2011 and the present Arbitrator was appointed and the claim statement was filed on 27.11.2014. The Arbitrator has passed a reasoned award.

10. Considering the facts of the case, this Court is of the opinion that it would suffice to direct the applicant to give an undertaking agreeing to return the amount with interest, if the respondents succeeds in the main O.P. and this would be a sufficient safeguard for the respondents.

11. Subject to the above condition, the applicant is permitted to withdraw the entire amount, which is lying in deposit, together with the interest accrued till date, subject to the undertaking to be given by the applicant by filing an affidavit before the respondents that the applicant will repay the amount together with simple interest at the rate of 8% p.a., in the event, the respondents succeeds in the Original Petition.

The applications stand disposed of, accordingly.

sd/.T.S.S.J
15.02.2017

//Certified to be a true copy//
Dated this the day of 2017

R.s/03.04.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.



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