

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

O.A.No.219 of 2015

and

A.No.3745 of 2015

and

O.A.No.220 of 2015

and

A.No.3746 of 2015

O.A.No.219 of 2015:

In the matter of Arbitration
& Conciliation Act, 1996

And

In the matter of disputes
between Shivalaya Engineering
Associates, Chennai and Union
of India through Chief
Engineer, Chennai zone
arising out of C.A.
No.CECZ/CHE/29/ of 2011-2012:
contract for construction of
office, residential
accommodation cum hostel for
defence estate organization
at Teynampet, Chennai dated
10.12.2011.

M/s.Shivalaya Engineering Associates, Chennai
MES Contractor Index No:B-222,
Southern Command, Pune
Rep. by its Partner
Mr.B.Mohan,
Having its office at:
New No : 608, Old No : 55, MTH Road, Avadi,
Chennai - 600 054.

.. Applicant

Vs.

Union of India,

Rep. By its :

Chief Engineer, Military Engineering Services,

Chennai Zone, Island Grounds,

Chennai - 600 009.

.. Respondent

Original Application praying that this Hon'ble Court be pleased to pass an order of Interim Injunction restraining the respondent from completing the contract bearing No CA NO. CECZ/CHE/29 OF 2011-2012 DATED 10/12/2011 through some other contractor or agencies at Applicants Risk and cost pending determination of the final arbitration.

A.No.3745 of 2015:

Union of India,

Rep. By its :

Chief Engineer,

Chennai Zone, Island Grounds,

Chennai - 600 009.

...Applicant/Respondent

VS

M/s.Shivalaya Engineering Associates, Chennai

Rep. By its Partner

Mr.B.Mohan,

New No : 608, Old No : 55, MTH Road,

Avadi, Chennai - 600 054. ...Respondent/Petitioner

Application praying that this Hon'ble Court be pleased to vacate the interim order passed in O.A.No.219 of 2015 dated 02.03.2015.

O.A.No.220 of 2015:

In the matter of Arbitration
& Conciliation Act, 1996

And

In the matter of disputes
between Shivalaya Engineering
Associates, Chennai and Union
of India through Chief
Engineer, Chennai zone
arising out of C.A.
No.CECZ/CHE/29/ of 2011-2012:
contract for construction of
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Mr.B.Mohan,
Having its office at:
New No : 608, Old No : 55, MTH Road, Avadi,
Chennai - 600 054.

.. Applicant

Vs.

Union of India,
Rep. By its :
Chief Engineer, Military Engineering Services,
Chennai Zone, Island Grounds,
Chennai - 600 009.

.. Respondent

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Original Application praying that this Hon'ble Court
be pleased to pass an order of stay of the impugned order
of the Respondent dated 20/02/2015 bearing No.82873/620/E8

in the matter of CA NO. CECZ/CHE/29 OF 2011-2012 Dated 10/12/2011 pending final determination of the Arbitration.

A.No.3746 of 2015:

Union of India,
Rep. By its :
Chief Engineer,
Chennai Zone, Island Grounds,
Chennai - 600 009. ..Applicant/Respondent

vs

M/s.Shivalaya Engineering Associates, Chennai
Rep. By its Partner
Mr.B.Mohan,
New No : 608, Old No : 55, MTH Road,
Avadi, Chennai - 600 054. ..Respondent/Petitioner

Application praying that this Hon'ble Court be pleased to vacate the interim order passed in O.A.No.220 of 2015 dated 02.03.2015.

These applications coming on this day before this court for hearing the court made the following order:

Heard Mr.K.Vijayaragavan, learned counsel appearing for the applicant and Mr.Su.Srinivasan, learned Additional Solicitor General appearing for the respondent.

2. These applications have been filed by the applicant Contractor praying for an order of interim injunction restraining the respondent from completing the contract

dated 10.12.2011 through some other contractor or agency at the applicant's risk and cost pending determination of the final arbitration and for stay of the impugned order of the respondent dated 20.02.2015, in and by which, the construction contract awarded in favour of the applicant was cancelled.

3. When the applications were heard, at the first instance, the Court passed an order on 02.03.2015, stating that the *prima facie* case made out by the applicant and the balance of convenience is in favour of the applicant and granted an order of interim injunction and interim stay.

4. The applicant has invoked arbitration clause and has filed a statement of claim before the learned Arbitrator seeking for a declaration that the order of cancellation of contract dated 20.02.2015 as null and void to declare the report of IIT, Madras, which was obtained by the respondent as not binding on the applicant, for damages and other reliefs.

5. The learned Arbitrator, by proceedings dated 22.09.2015, advised the applicant as well as the respondent to take up the structural evaluation job jointly with the

Central Structural Engineering Research Centre-SERC with explicitly defined scope and time by 15.10.2015 and submit the report by 30.11.2015 and the expenses to be shared by both parties equally.

6. The said Expert Body has now submitted a report termed as Technical Evaluation of the under construction office building and residential-cum-hostel building for Defense Estate Organization at Chennai and has made certain recommendations for possible remedial measures. The conclusion in the said report is as follows:

"Conclusion

The following conclusions are drawn from the field and analytical investigations.

1. *The centre line of few columns coming from ground floor was shifted.*

2. *Column main reinforcements coming from ground floor were found to be cut and the reinforcements were added adjacent to it by welding with small bars on the first floor of office building.*

3. *The cover concrete to the main reinforcement is found to be less for few columns in the first floor of office building.*

4. The cover in the ground floor of office building and in the ground and first floor of residential-cum-hostel building are within permissible limits.

5. The pH and chloride content are found to be within permissible limits.

6. The structural analysis results show that the columns are safe to carry the designed loads."

Apart from the above, remedial measures have also been suggested in the said report.

7. Learned counsel for the applicant points out that in page No.13 of the report, the Expert Body has stated that the moment carrying capacity provided for the columns is greater than the actual and hence it is safe. Therefore, it is the submission of the applicant that the stand taken in the report submitted by the IIT, Madras that the building is unsafe for occupation is erroneous, as the present report, which is a report based on an inspection conducted in the presence of both the applicant as well as the respondent.

8. Therefore, it is submitted that the applicant has got a good case before the learned Arbitrator. However, one issue which has to be pointed out on the order of interim stay was granted on 02.03.2015 for staying the order of cancellation of contract dated 20.02.2015. It is a settled legal principle that an interim order cannot have an effect of final relief or in other words, the effect of the order of stay would mean as if order of cancellation of contract dated 20.02.2015 is not in existence.

9. This cannot be done, while granting an interim relief, more so, in an application under Section 9 of the Arbitration and Conciliation Act, 1996. With regard to the order of injunction, which has been granted, it is in respect of a building, which is to be constructed for a Defence Organization for hostel accommodation and administration, etc. and if further work is not proceeded, it would be against public interest. However, in the meantime, since arbitration proceedings are pending, the applicant should be protected for the time being, from any demand towards risk and cost and that should be subject to the ultimate result before the Arbitral Tribunal, before whom, the cancellation of contract has been challenged.

10. In the light of the above, the interim order dated 02.03.2015 stands modified to the following effect:

- i. The order of interim stay of the cancellation of contract dated 20.02.2015 stands set aside and it is left open to the applicant to canvass the correctness of the said order in the pending arbitral proceedings.
- ii. The order of interim injunction granted is modified to the extent and restricted only with regard to risk and cost and the respondent organization is entitled to proceed further with the project. However, this will not in any manner prejudice the rights of the applicant before the learned Arbitrator.
- iii. It is made clear that any observation made in this order, will not prejudice the right of the applicant before the learned Arbitrator or the defense that has been raised by the respondent.

The applications stands 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/23.02.2017

COURT OFFICER

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



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