

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.03.2017

PRONOUNCED ON: 22.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.60 of 2010

M/s.Sesa Goa Limited  
represented by its Power of Attorney  
Agent Uday Naik, Goa

Plaintiff

Vs

Board of Trustees of Port of Chennai  
Rajaji Salai, Chennai-1

Defendant

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC and Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : Mr.T.Poornam

For Defendant : Mr.P.Saravanan

#### JUDGEMENT

This civil suit has been filed, to pass a judgement and decree, against the Defendant:-

(a) directing the Defendant to pay a sum of Rs.2,73,58,225/- with interest at 13.25% p.a. on the sum of Rs.2,00,73,590.60/- from the date of the plaint till realisation.

(b) directing the Defendant to pay the costs of the suit.

2. **Plaint:-** The Plaintiff is a Public Limited Company, incorporated under the Companies Act, 1956 and is engaged in mining and export of iron ore for more than 50 years. The Plaintiff also exports iron ore from Chennai. The

Defendant is a Major Port, constituted under the Major Port Trust Act, 1963 and is providing services to the importers and exporters at the Port of Chennai and granting lease of open space warehouses for storage of goods to the importers and exporters. The Plaintiff, as an exporter utilising the services of the Defendant, had opened a current account No.198 and after the same was closed, opened a EDI (Electronic Data Interface) Account with the Indian Bank, Chennai on 19.7.2002 to enable the Defendant to recover legitimate charges due by the Plaintiff from the said EDI Account. The iron ore shipped from Chennai Port Trust is extracted, processed and transported by Rail and finally stacked in the plot space at the Defendant Port Trust.

3. It had been stated in the plaint that the Plaintiff had entered into an agreement, dated 01.06.1997 for the period 01.06.1997 to 30.9.1997 and another agreement dated 30.10.1998 for the period 10.7.1998 to 9.7.1999. The Defendant had allotted plots of various sizes at Chennai Port in favour of the Plaintiff. By letters dated 7.7.1999 and 13.9.1999, the Defendant had allowed the Plaintiff to continue to occupy and use the plot for the period 1.1.2000 to 31.10.2000. On the request of the Plaintiff, by its letter dated 17.4.2000, the Defendant by letter dated 6.9.2000 had allotted to the Plaintiff a plot measuring 120x35 meters which remained in the possession of the Plaintiff for the period 1.11.2000 to 29.1.2002. A plot was also allotted by the Defendant by letter dated 22.12.2001 for the period 30.1.2002 to 31.3.2004. Similarly by letter dated 24.2.2002, the Defendant had also allotted a plot in favour of the Plaintiff for the period 1.4.2004 to 30.6.2004. During the above periods, the Plaintiff had exported substantial quantity of iron ore. The agreements dated 1.6.1997

and 30.10.1998 cast an obligation on the part of the Plaintiff to export quantity not less than 6,00,000 MTS of iron ore under valid export licence from the Government of India and charges will have to be paid to the Defendant towards wharfage and cleaning. If the Plaintiff did not export the said quantity, the Plaintiff will have to pay the Defendant the amounts for the shortfall. However, after 10.7.1999 till 30.6.1964, as stated above, through letters, plots were allotted, but there was no obligation on the Plaintiff to export the minimum guaranteed throughput as contained in the agreement dated 30.10.1998. The letters of allotment did not contain such terms or conditions. However, a notice of demand dated 11.4.2005 was received by the Plaintiff, whereby the Defendant had claimed a shortfall in exports during the period 7.8.2000 to 25.6.2001, 26.8.2001 to 7.6.2002 and 10.7.2002 to 5.6.2003, aggregating to a total of 2,37,732 MTS and demanded payment of Rs.87,79,269.60/-. The Plaintiff had sent a reply dated 19.4.2005 denying the liability.

4. The Defendant had issued another letter dated 4.7.2005, reiterating and justifying its claim. The Defendant had issued further letters dated 12.9.2005 and 3.11.2005 once again demanding payment of the said amount. The Plaintiff had denied liability by letter dated 9.11.2005. Again, the Defendant had issued a letter dated 12.12.2005, for which the Plaintiff had replied on 9.1.2006. Finally, by letter dated 31.5.2006, the Defendant had again made a claim and intimated that it would stop all its services if the amount was not paid within 7 days. The Plaintiff had sent a reply dated 14.6.2006, seeking a personal hearing. The Defendant by another letter dated 2.11.2006 had claimed that the Plaintiff should make the payment and stated that the

amount was subject of audit queries. The Plaintiff had replied by letter dated 21.11.2006. After that, the Defendant had not replied. The Plaintiff was under the impression that the Defendant had dropped its claim. Since the claim was for the period from 7.8.2000 to 5.6.2003, the Plaintiff had also thought that the claim was time barred. The Plaintiff had continued to export iron ore using the plots allotted by the Defendant. The Plaintiff had also entered into an agreement, dated 30.10.2006 for the period from 1.4.2006 to 31.3.2007. According to this agreement, the Plaintiff was required to furnish a bank guarantee and the Plaintiff had also furnished a bank guarantee dated 14.8.2006 for Rs.3,43,99,200/-. This was with reference to the letters of allotment dated 9.3.2006 and for the period 1.4.2006 to 31.3.2007. The Plaintiff had also furnished two other bank guarantees for Rs.4,23,93,600/- and Rs.31,27,200/-. By the agreement dated 30.10.2006, the Plaintiff had to export a quantity of not less than 7,20,000 MTS of iron ore and also pay charges to the Defendant. The Defendant had raised a demand dated 10.4.2007 for a sum of Rs.67,59,678/-, claiming a shortfall in export quantity. The Defendant had stated that they would encash the bank guarantee if the said amount was not paid within 10 days.

5. It had been further stated in the plaint that the Plaintiff had issued a letter dated 16.4.2007, denying liability and requesting not to encash the bank guarantee. The Plaintiff had received a letter dated 14.5.2007 from the Defendant Trust to the Chief Manager, Canara Bank that the Defendant had requested the bank to pay Rs.1,55,38,947.60/- by encashing bank guarantees for the two demands of Rs.87,79,269.60/- and Rs.67,59,678/-. It is the claim of

the Plaintiff that this letter dated 14.5.2007 was an arbitrary exercise of power by the Defendant. The Plaintiff had written a letter dated 18.5.2007 to the Canara Bank, pointing out that the demand to encash the bank guarantee was illegal. Since there was no response, the Plaintiff again wrote to the Defendant on 22.5.2007, stating that the bank guarantee was furnished for allotment of plot by an agreement for the period 1.4.2006 to 31.3.2007 and that the Plaintiff had replied to the Defendant's demand by letter dated 16.4.2007. The Plaintiff had pointed out that the Defendant had directly addressed the Canara Bank for encashment of bank guarantee for Rs.1,55,38,947.60/-. The Canara Bank had also released the said sum to the Defendant on 21.5.2007. The Plaintiff wrote a letter dated 4.6.2007 to the Defendant seeking return of the said amount. It had been claimed that the Defendant had invoked the bank guarantee furnished against a specific agreement as against a shortfall not covered under the agreement.

6. It had been claimed that the Defendant surreptitiously included the sum of Rs.87,79,260/- which was barred by law of limitation. It is the contention of the Plaintiff that the Defendant cannot impose or recover any amount without prior sanction of the tariff authority of the Major Ports. It had been stated that invoking of the bank guarantee is mala fide, illegal and arbitrary. The Plaintiff, therefore, had filed WP.No.20253 of 2006 for a Writ of Certiorarified Mandamus to quash the letter dated 14.5.2007 and for a direction to pay the said amount under the bank guarantee to the Plaintiff. It had been stated that this court, while passing orders in the Writ Petition, had observed that the recovery of Rs.87,79,269.60/- on account of shortfall for the period

7.8.2000 to 5.6.2003 is unsustainable. This court had allowed the Writ Petition in part and directed the Defendant to provide a reasonable opportunity to the Plaintiff including personal hearing. Accordingly, the Plaintiff was called for a personal hearing on 5.8.2009 and the Defendant by letter dated 6.8.2009, had rejected the claim for refund of Rs.87,79,269.60/- overlooking the observations of the High Court, which had become final. The Plaintiff has, therefore, filed this suit also including the claim of Rs.87,79,269.60/-.

7. The suit had been filed for a claim of Rs.67,59,678/- on the ground that on 23.12.2006, the Plaintiff had written a letter to the Defendant, seeking permission to export iron ore by M/s.Zeenath Transport Company, using the plot allotted to the Plaintiff. The Defendant had granted permission on 29.12.2006. However, the Defendant had claimed that the said export would not be included in the minimum guarantee throughput. It is this shortfall which the Defendant had claimed in a sum of Rs.67,59,678/- and it is the contention of the Plaintiff that the Defendant had invoked the bank guarantee including this sum without considering the representation of the Plaintiff. The Plaintiff had further sought a claim for Rs.45,34,643/- for the period from 1.7.2005 to 31.3.2005. This claim was on the basis of a letter by the Defendant dated 31.5.2006, claiming that for the period 1.7.2005 to 31.3.2006, there was a shortfall of 77015 MTS of iron ore. The Plaintiff had sent a letter dated 14.6.2006, claiming that the Defendant did not take into account the shipments made over and above the plot capacity of 60,000 MTS and had relied upon the conditions which are not part of the agreement dated 30.8.2005 for the period 1.7.2005 to 31.3.2006. It had been stated that the Defendant did not consider

the provisions of clause 5(j) and 5(k) of the agreement dated 30.8.2005, whereby the Plaintiff had arranged for a survey by approved surveyors and they had also forwarded a survey report, stating that the Plaintiff had actually exported 664638 MTS of iron ore whereas the minimum quantity was 54000 MTS alone. Since the Defendant had threatened to suspend the port services, the Plaintiff had made the payment of Rs.45,34,643/- under protest through demand draft. Consequently, in view of the above circumstances, the Plaintiff had filed this suit for a total sum of Rs.2,00,73,590.60/- being the amounts under the three demands of Rs.87,79,269.60/-, Rs.67,59,678/- and Rs.45,34,643/-. The Plaintiff has also sought interest at the rate of 13.5% p.a. It had been stated that the Plaintiff had continued its operations in the Chennai Port up to 31.3.2007, after which, the Plaintiff discontinued its operations at Chennai. The Plaintiff sought a sum of Rs.2,73,58,225/- with interest at the rate of 13.25% per annum on Rs.2,00,73,590.60/- and also sought further interest from the date of the claim till the date of realisation and costs.

8. **Written Statement:-** In the written statement filed by the Defendant, all the averments in the plaint had been denied. It had been stated that the Defendant had allotted a plot for usage by the Plaintiff during the year 1997 and subsequently for the period 10.7.1998 to 9.7.1999. At the initial periods, the Plaintiff had caused a shortfall of Rs.80,10,684/- and the said amount had been collected from the Plaintiff. The Defendant had specifically denied the statements of the Plaintiff that they had achieved minimum guaranteed throughput. According to the Defendant, the Plaintiff had committed a shortfall and the break up details of the occupation of the Plaintiff

had also been furnished as follows:-

| Allotment Period      | MGT.MT S | Quantity Exported (MTS) | Shortfall Quantity (MTS) | Shortfall Amount (Rs.) |
|-----------------------|----------|-------------------------|--------------------------|------------------------|
| 7.8.2000 to 25.6.2001 | 6,00,000 | 3,94303                 | 2,05,697                 | 74,05,092              |
| 26.8.2001 to 7.6.2002 | 6,00,000 | 5,78,025                | 21,975                   | 7,91,100               |
| 10.7.2002 to 5.6.2003 | 6,00,000 | 5,89,940                | 10,060                   | 5,83,077.60            |
| Total                 |          |                         |                          | 87,79,269.60           |

9. According to the Defendant, the Defendant had caused a shortfall of 2,37,732 MTS and the amount payable is Rs.87,79,260.60/-. The Defendant had further stated that they had sent several letters and notices to the Plaintiff, but the Plaintiff did not make the said payment. The Defendant therefore had encashed the bank guarantee furnished by the Plaintiff. The Defendant had further stated that a plot was allotted to the Plaintiff for the period 1.4.2006 to 31.3.2007 fixing the minimum guaranteed throughput at 7,20,000. The Plaintiff had furnished three bank guarantees for a value of Rs.7,99,20,000/-. However, the Plaintiff had exported only 6,49,102 MTS, causing a shortfall of 60,898 MTS, for which the Defendant had raised a claim of Rs.67,59,678/-. Since the Plaintiff did not make the payments in spite of several reminders, the Defendant had encashed the bank guarantee furnished by the Plaintiff. It had been stated that in the letter dated 11.4.2005, the Defendant had given the complete details of the quantity of shortfall and the value which has to be recovered towards wharfage charges on the shortfall.

10. The Defendant had stated that as an entity of the State, there

was an obligation on the Plaintiff to pay the Defendant the loss to the State. With respect to the Writ Petition, the Defendant had claimed that in accordance with the directions of this court, a personal hearing was held with the officials of the Plaintiff on 5.8.2009 and an order was passed on 6.8.2009, stating that the claim for refund of Rs.87,79,260.60/- by the Plaintiff was rejected. It had been stated that for the period 1.4.2006 to 31.3.2007, when the Plaintiff should have exported 720000 MTS in their own name, the Plaintiff had exported only 659102 MTS, causing a shortfall amounting to Rs.67,59,678/-. It had been stated that the Plaintiff by letter dated 23.12.2006 had stated that they were going to make the shipments jointly with M/s.Zeenath Transport Company. The Defendant had sent a letter dated 29.12.2006 to the Plaintiff, granting permission, but stated that the iron ore exported under the licence of M/s.Zeenath Transport Company will not be considered for minimum guaranteed throughput. It had been stated that the exporters already been allotted with plots at Bharathi Dock alone can join with the Plaintiff to claim joint export. However, M/s.Zeenath Transport Company had not been allotted plots during the above allotment period.

11. With respect to the further claim, the Defendant had stated that during the allotment period from 1.7.2005 to 31.3.2006, a plot with capacity of 60,000 MTS was allotted to the Plaintiff fixing MGT of 54000 MTS and later refixing it as 5,26,989. During that period, the Plaintiff had exported only 4,49,971 MTS, causing a shortfall of 77015 MTS, for which the Plaintiff had to pay a sum of Rs.45,34,643/- and the Plaintiff had also paid the said sum. It had been denied that the said amount was wrongly collected. It had been stated

that calculations on shortfall made by the Defendant are correct. Consequently, the Defendants had denied liability either to the total sum claimed in the plaint or to the individual claims of Rs.87,79,269.60/- and Rs.67,59,678/- and Rs.45,34,643/-. The Defendants had therefore stated that the suit should be dismissed with costs.

12. On the basis of the above pleadings, by order dated 6.2.2012 , this court had framed the following issues:-

1. Whether the Plaintiff is entitled to the sum of Rs.2,73,58,225/- with interest at 13.25% per annum on the suit claim from the date of plaint till realisation?
2. Whether the Defendant is entitled to recover all the charges due and payable by the Plaintiff to it by encashing the bank guarantee ?
3. Whether the Defendant is entitled to recover shortfall charges for not achieving the MGT from the Plaintiff during the period from 1.7.2005 to 31.3.2006 and from 1.4.2006 to 31.3.2007
4. Whether the Defendant is entitled to deduct the loan cargo, as per letter dated 29.12.2006 and clause 2(b) of the agreement for the period 1.4.2006 to 31.3.2007 while computing the quantity of cargo exported by the Plaintiff?
5. Whether the Plaintiff is entitled to claim Rs.45,34,643/- from the Defendant paid by it under protest to the Defendant for the period 1.7.2005 to 31.3.2006?
6. To what other reliefs the parties are entitled to?

13. The parties went to trial and during the trial, the Plaintiff had examined one witness as PW.1 and marked Ex.P1 to Ex.P44. The Defendant had examined one witness as DW.2 and marked Ex.D1 to Ex.D11.

14. Among the documents marked by the Plaintiff, the main documents required for determination of the issues are Ex.P2 and Ex.P3, which

are the copies of the agreement between the Plaintiff and the Defendant, Ex.P4 and Ex.P5, which relate to allotment for the period 1.1.2000 to 31.10.2000, Ex.P6 and Ex.P7, which relate to allotment of plot for the period 1.1.2000 to 29.1.2002, Ex.P8 which relates to allotment of plot for the period 30.1.2002 to 31.3.2004 and Ex.P9 which relates to allotment of plot for the period 1.4.2004 to 30.6.2004. The other documents which are necessary to be discussed are Ex.P10 to Ex.P21, which are all demands and replies made by the Defendant and the Plaintiff with respect to the demand for a sum of Rs.87,79,269.60/-. Agreement dated 30.10.2006 was marked as Ex.P23 and bank guarantee No.66/2006 dated 14.8.2006 was marked as Ex.P24 and the letter of allotment dated 9.3.2006 was marked as Ex.P22. Two other bank bank guarantees dated 12.4.2006 and 15.9.2006 were marked as Ex.P25 and Ex.P26. The demand by the Defendant for the sum of Rs.67,59,678/- and the denial for liability issued by the Plaintiff were marked as Ex.P27 and Ex.P28. The letter dated 14.5.2007 issued by the Defendant to the Chief Manager, Canara Bank, seeking to encash the bank guarantee for a sum of Rs.1,55,38,947.60/- was marked as Ex.P29. Letter of the Plaintiff to the Canara Bank was marked as Ex.P30 and the letters to the Defendant were marked as Ex.P31 and Ex.P32. Copy of WP.No.20253 of 2007 was marked as Ex.P33 and the order passed thereon dated 25.5.2009 was marked as Ex.P35. Ex.P36 is the letter dated 30.7.2009 issued by the Defendant to the Plaintiff. The order dated 6.8.2009 rejecting the claim of Rs.87,79,269.60/- by the Defendant was marked as Ex.P37. The letters with respect to the permission to export iron ore of M/s.Zeenath Transport Company was marked as Ex.P38 and the reply as Ex.P39. The letter by the

Plaintiff was marked as Ex.P40. The agreement for allotment between the Plaintiff and the Defendant was marked as Ex.P41 and the letter dated 20.6.2006 issued by the Plaintiff was marked as Ex.P42 and the copy of the legal notice issued by the Advocate for the Plaintiff dated 21.10.2009 was marked as Ex.P43.

15. The Defendant among the documents marked as Ex.D1 dated 25.5.2009 the order of the High court made in WP.No.20253 of 2007 and the letters sent by the Defendant to the Plaintiff as Ex.D2, D3 and D4, the agreement for allotment as Ex.D4, memos of calculation for plot No.E5 as Ex.D6, for plot C1 as Ex.D7, for plot no.C2 as Ex.D8, for plot W1 (north) as Ex.D9, for plot E4 as Ex.D10 and for plot C3 (north) as Ex.D11.

16. This court heard the learned counsel on either side.

17. Upon hearing both the learned counsel for the Plaintiff and the Defendant and on analysis of the entire documentary and oral evidence adduced during trial, the issues framed by this court on 6.2.2012, which deal with facts, are recast as follows and the issues, which are recast as follows, also deal with the facts, but are reworded as follows:-

1. Whether the suit is barred under Section 9 of CPC?
2. Whether the Plaintiff is entitled for recovery of a sum of Rs.87,79,269.60/- which was recovered by the Defendant by encashing the demand draft as due and payable for the period 7.8.2000 to 25.6.2001, 26.8.2001 to 7.6.2002 and 10.7.2002 to 5.6.2003?
3. Whether the Plaintiff is entitled to recover from the Defendant a sum of Rs.67,59,678/-, which had been claimed by the Defendant and encashed through bank guarantee for the period 1.4.2006 to 31.3.2007?

4. Whether the Plaintiff is entitled to recover the amount paid under protest to the Defendant, who had claimed them as shortfall for the period 1.7.2005 to 31.3.2006?
5. To what other reliefs are the parties entitled to?

18. **Issue (1):-** This issue arose during the arguments when the learned counsel for the Defendant challenged the jurisdiction of this court to try and adjudicate the issues involved in the litigation. According to the learned counsel for the Defendant, he did not dispute the facts as contended by the Plaintiff. The learned counsel for the Defendant did not dispute that they had claimed a sum of Rs.87,79,269.60/- for the period under the allotment letters and for the period 7.8.2000 to 25.6.2001, 26.8.201 to 7.6.2002 and 10.7.2002 to 5.6.2003. The learned counsel for the Defendant also did not dispute the fact that the Defendant had raised a demand for Rs.67,59,678/- for shortfall for the period 1.4.2006 to 31.3.2007. The learned counsel for the Defendant also did not dispute the fact that the Defendant had encashed the bank guarantee furnished by the Plaintiff to a sum of Rs.1,55,38,947.60/-. The learned counsel for the Defendant also did not dispute the fact that they had raised a demand for Rs.45,34,643/- as shortfall for period 1.7.2005 to 31.3.2006 and that the Plaintiff had actually paid the same. However, the learned counsel for the Defendant had challenged the jurisdiction of this court on the ground that pursuant to the order made in WP.No.20253 of 2007, dated 25.5.2009, the Defendant had called the Plaintiff for a personal hearing and had passed an order dated 6.8.2009. The judgement of this court in the said Writ Petition dated 25.5.2009 had been produced as Ex.P35. In Ex.P35, this court had observed

as follows:-

“35. The court, on a careful scrutiny and analysis of the materials available on record, is of the view that the invocation of the bank guarantee on the part of the 2nd Respondent in so far as the recovery of Rs.87,79,269.60/- on account of shortfall in 'Minimum Guaranteed Throughput' for the period between 7.8.2000 and 5.6.2003 is unsustainable. However, taking into consideration that the bank guarantee was invoked for the recovery of the said sum also, it is fit and proper to issue the following directions:-

a. The Writ Petition is partly allowed and the impugned proceedings dated 14.5.2007 on the file of the 2nd Respondent is quashed.

b. The 2nd Respondent is directed to provide fair, adequate and reasonable opportunity to the Petitioner including personal hearing regarding the reimbursement of Rs.87,79,269.60/- and pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. But in the circumstances, there will be no order as to costs. ”

19. It is the contention of the learned counsel for the Defendant that in accordance with the judgement of this court, they had issued a letter dated 30.7.2009 in Ex.P36, calling upon the Plaintiff to attend a personal hearing fixed by the Chairman of the Chennai Port Trust on 5.8.2009 to resolve the issue. The Plaintiff was requested to attend the personal hearing. The Plaintiff, as stated in the plaint, had attended the personal hearing along with their counsel. The personal hearing was conducted as directed by this court in the said Writ Petition. Subsequently, by order dated 6.8.2009, which had been produced as Ex.P37, the Defendant had addressed the Plaintiff as follows:-

“In compliance with the above order a personal hearing was convened on 5.8.2009 and after hearing the submissions made on behalf of M/s.Sesa Goa Limited, and after perusing the materials, records of the Chennai Port Trust and the representation dated 5.8.2009 given in hand by M/s.Sesa Goa

Limited, it is hereby ordered as below:-

It has been observed that while renewing the allotment vide C.Pt. Letter dated 6.9.2000 where in it was clearly stated that the land was allotted to you as per the existing terms and conditions and also due to the fact the existing terms and conditions and also due to the fact that the existing terms and conditions and agreement clearly stated that the requirement of minimum guaranteed throughput which you have not achieved and short by 2,37,732 MTs during the period between 7.8.2000 to 5.6.2003. At no given time you had disputed our letter dated 6.9.2000 that the existing terms and conditions were not acceptable. As such, the contention of M/s.Sesa Goa Limited that the recovery of the shortfall charges in the absence of agreement as illegal is not acceptable. Therefore, the claim for the refund of the recovered shortfall charges of Rs.87,79,269.60/- against the said non achievement of Minimum Guaranteed Throughput for the period between 7.8.2000 to 5.6.2003 is rejected.”

20. Relying on the above order passed by the Chairman of the Chennai Port Trust, the learned counsel for the Defendant had stated that this court cannot act as an Appellate Authority over the order of the Chairman of the Chennai Port Trust. The learned counsel for the Defendant disputed the contention of the Plaintiff that the civil court has jurisdiction to try the issues. It is the contention of the learned counsel for the Defendant that the civil court has no jurisdiction and the Plaintiff should have worked out its remedy elsewhere. In this connection, both the learned counsel for the Plaintiff and the Defendant pointed out that under the Major Ports Act, there is no appeal provided as against the said order passed by the Chairman of the Chennai Port Trust. It is further seen that the order of the Chairman is an order passed pursuant to the directions of this court. In this connection, the learned counsel for the Plaintiff urged this court to hold that unless the jurisdiction of the court was expressly or impliedly barred under Section 9 of CPC, this court would

have every right and jurisdiction to try the issues.

21. Section 9 of CPC is extracted as under:-

**“ 9. Courts to try all civil suits unless barred.:-** The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I:- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II:- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.”

22. The learned counsel for the Plaintiff has also relied upon the decision of the Honourable Supreme Court reported in **AIR-1995-SC-2007 (Most.Rev.P.M.A.Metropolitan Vs. Moran Mar Marthoma)**, in which, the Honourable Supreme Court had dealt with the scope of Section 9 of CPC. In that judgement, it had been held as follows:-

“One of the basic principles of law is that every right has a remedy. Ubi jus ibi remedium is the well known maxim. Every civil suit is cognizable unless it is barred, 'there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue' Smt. Ganga Bai vs. Vijay Kumar & Ors., AIR 1974 SC 1126. The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is

structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word 'shall' and the expression, 'all suits of a civil nature' unless 'expressly or impliedly barred'.

Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of right. The word 'shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of 'expression, 'all suits of civil nature'. The word 'civil' according to dictionary means, 'relating to the citizen as an individual; civil rights'. In Black's Legal Dictionary it is defined as, 'relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings'. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc, were added to it later. But they too pertain to the larger family of 'civil'. There is thus no doubt about the width of the word 'civil'. Its width has been stretched further by using the word 'nature' along with it. That is even those suits are cognizable which are not only civil but are even of civil nature. In Article 133 of the Constitution an appeal lies to this Court against any judgment, decree or order in a 'civil proceeding'. This expression came up for construction in *S.A.L. Narayan Row & Anr. etc. etc. v. Ishwarlal Bhagwandas & Anr. etc. etc.* AIR 1965 SC 1818. The Constitution Bench held 'a proceedings for relief against infringement of civil right of a person is a civil proceedings'. In *Arbind Kumar Singh v. Nand Kishore Prasad & Anr.* AIR 1968 SC 1227 it was held 'to extend to all proceedings which directly affect civil rights'. The dictionary meaning of the word 'proceedings' is 'the institution of a legal action, 'any step taken in a legal action.' In Black's Law Dictionary it is explained as, 'In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like'. The word 'nature' has been defined as, 'the fundamental qualities of a person or thing; identity or essential character; sort; kind; character'. It is thus wider in content. The word 'civil nature' is wider than the word 'civil proceeding'. The Section would, therefore, be available in every case where the dispute has the characteristic of affecting

one's rights which are not only civil but of civil nature. Page 22 ..  
civil nature page 23.”

23. In this case, the Plaintiff has come to court on the basis of an agreement entered into between the Plaintiff and the Defendant with respect to allotment of plots to be used for the purpose of export of iron ore. An agreement signifies performance purpose of the agreement and breach of the agreement and the consequences thereof. These are the issues which relate to facts and circumstances surrounding the execution, performance and breach. In the present case, the Defendant had not disputed the facts. Still the Plaintiff has a duty to put forward the best evidence before this court. The Plaintiff has to still present the document before the court. Every document has to be admissible in a court of law. It has to be proved. It has to be shown as relevant. Thereafter, it becomes evidence. This evidence has to be analysed by the court. It is not necessary to say that merely because the documents are admitted by the Defendant, the Plaintiff need not produce oral and documentary evidence. Oral and documentary evidence are necessary to render a finding with respect to the issues in dispute between the parties. For all these reasons, even though the Defendant had claimed that they are not disputing the facts as raised by the Plaintiff, still there is a duty cast on the Plaintiff to produce evidence before this court. Once evidence is produced, this court will have to analyse and render a finding on each of the issues framed for consideration. This is the procedure in a civil suit. I hold that even though the Chairman of the Chennai Port had passed an order, still the Plaintiff can approach this court, seeking remedies. Consequently, I hold that the suit is maintainable. It is also

not specifically barred by any Statute. The Plaintiff has come to court seeking the relief on the basis of an agreement and on the basis of letters of allotment. The contention of the learned counsel for the Defendant is also negated on the fact that even in the order in WP.No.20253 of 2007, though the High Court had held that the claim of the Defendant is unsustainable, still since there were inherent restrictions on the writ jurisdiction of the court, the court had directed the Defendant to give a personal hearing. The court did not direct the Defendant to pay the money to the Plaintiff. Seeking a mandatory relief requires payment of court fees and adjudication of issues. This is possible only in a civil suit and consequently, for all the reasons stated above, I hold that the suit is not barred either expressly or impliedly. Consequently, the issue (1) is answered in favour of the Plaintiff.

24. **Issue (2):-** The Plaintiff had entered into an agreement in Ex.P2, dated 1.6.1997 for the period 1.6.1997 to 30.9.1997. During that period, there was no obligation for minimum export. The Plaintiff was allotted a plot by Chennai Port Trust to be utilised for export of iron ore. For the subsequent period from 10.7.1998 to 9.7.1999, the other agreement dated 30.10.1998 in Ex.P3 was entered into between the parties. In this agreement, for the first time, the Defendant had placed an obligation on the Plaintiff to have a minimum guaranteed throughput to be shown as export of iron ore. In the said agreement, minimum guaranteed throughput was fixed at 6,00,000 MTs. Licence fee was to be paid in advance for 50,000 MTs of iron ore as a current account. There were further obligations on both the Plaintiff and the Defendant, but primarily the Plaintiff was under an obligation to have a minimum

guaranteed throughput in export of iron ore. After that, the Defendant had allotted plots on the basis of letters as detailed hereunder:-

- i. On the basis of Ex.P4 and Ex.P5 letters dated 7.7.1999 and 13.8.1999 of the Plaintiff, the Plaintiff was allowed to use the plot measuring 75x35 meters for the period from 1.1.2000 to 31.10.2000, during which the Plaintiff had exported 4,90,530 MTS of iron ore.
- ii. On the basis of Ex.P6 and Ex.P7 letters dated 17.04.2000 and 6.9.2000 of the Plaintiff, the Plaintiff was allowed to use the plot measuring 120x35 meters for the period from 1.11.2000 to 29.1.2002, during which the Plaintiff had exported 6,49,202 MTS of iron ore.
- iii. On the basis of Ex.P8 letter dated 22.12.2001 of the Plaintiff, the Plaintiff was allowed to use the plot measuring 100x35 meters for the period from 30.1.2002 to 31.3.2004, during which the Plaintiff had exported 13,14,865 MTS of iron ore.
- iv. On the basis of Ex.P9 letter dated 24.2.2004 of the Plaintiff, the Plaintiff was allowed to use the plot measuring 120x35 meters for the period from 1.4.2004 to 30.6.2004, during which the Plaintiff had exported 66,000 MTS of iron ore.

25. As stated earlier, by Ex.P3, the Plaintiff was required to export a quantity of not less than 6,00,000 MTs of iron ore. The Plaintiff was under the obligation to pay wharfage and cleaning charges if there was a shortfall. It is the contention of the Plaintiff that they had utilised the plots on the basis of the terms and conditions contained in the letters of allotment. In the said letters of allotment, there was no obligation to have a minimum guaranteed throughput. However, by Ex.P10 letter dated 11.4.2005, the Defendant claimed a shortfall for the period 7.8.2000 to 25.6.2001, 26.8.2001 to 7.6.2002 and 20.7.2002 to 5.6.2003, respectively to a quantity of 205697 MTs, 21975 MTs and 10060 MTs respectively, totalling 2,37,732 MTs and demanded payment of Rs.87,79,269.60/-. The Plaintiff had contended that there was no basis since in

the letters of allotment, there was no minimum guaranteed throughput fixed. The Plaintiff had written Ex.P11 in this regard. However, the Defendant had raised demands on 4.7.2005 by Ex.P12, 12.9.2005 by Ex.P13, 3.11.2005 by Ex.P14, for which the Plaintiff had sent a reply dated 9.11.2005 in Ex.P15. However, the Defendant had again raised a demand dated 12.12.2005 in Ex.P16, for which the Plaintiff had replied on 9.1.2006 in Ex.P17. The Defendant had again made a demand on 31.5.2006 in Ex.P18 for which the Plaintiff sent a reply on 14.6.2006 in Ex.P19. The Defendant had further raised a demand on 2.11.2006 in Ex.P20 for which also the Plaintiff had replied on 21.11.2016 in Ex.P21. In this connection, the Plaintiff has been consistently stating that they are not liable to such a sum of Rs.87,79,269.60/- for the simple reason that there was no minimum guaranteed throughput fixed in the letters of allotment in Ex.P5 dated 13.8.1999, Ex.P7, dated 6.9.2000, Ex.P8 dated 22.12.2001 and Ex.P9 dated 24.2.2004. These letters cover the period for which the demand was made by the Defendant.

26. It is the contention of the learned counsel for the Plaintiff that thereafter, the Plaintiff did not receive any further claim. The said claim was for the period 7.8.2000 to 5.6.2003. However, the Plaintiff had received a copy of the letter, which was actually addressed by the Defendant to the Chief Manager, Canara Bank, Mathias Plaza, Panajim, Goa, dated 14.5.2007 marked as Ex.P29, in which the Defendant claimed to encash a sum of Rs.1,55,38,947.60/-. This was encashed by way of bank guarantee which had been furnished to the Defendant by the Plaintiff. It is the contention of the learned counsel for the Plaintiff that the bank guarantee furnished under

agreement dated 30.10.2006 was for the period 1.4.2006 to 31.3.2007. However, the Defendant had encashed the bank guarantee including the sum which was due for the period 7.8.2000 to 5.6.2003. It was because of the encashment of such bank guarantee, the Plaintiff had filed WP.No.20253 of 2007. In the order made in the said Writ Petition, which has become res-integra between the parties in so far as the finding regarding the encashment of the bank guarantee is concerned, this court had held as follows:-

“35. The court, on a careful scrutiny and analysis of the materials available on record, is of the view that the invocation of the bank guarantee on the part of the 2nd Respondent in so far as the recovery of Rs.87,79,269.60/- on account of shortfall in 'Minimum Guaranteed Throughput' for the period between 7.8.2000 and 5.6.2003 is unsustainable.”

As stated above, the Defendant had encashed the bank guarantee by letter dated 14.5.2007. This was with respect to, according the Defendant, liability for a sum of Rs.87,79,269.60/-. That liability was with respect to specific period 7.8.2000 to 5.6.2003. Even though between the Plaintiff and the Defendant there had been continuous transactions of allotment of plots wherein iron ore is stacked by the Plaintiff before export and payment for such allotment, still each allotment is a separate agreement or allotment through a separate letter. There cannot be a overlapping of claims for allotment by an agreement after the period of limitation. This due of Rs.87,79,269.60/- was for the period 7.8.2000 to 5.6.2003. It is the claim for money. It is a fact that the said claim should be enforced within a period of three years. Towards demand for such claim, the Defendant had been continuously writing letters and at each and every point of time, the Plaintiff denied their liability. The Plaintiff had contended that there

was no basis for such claim since there was no minimum guaranteed throughput fixed. The encashment by the Defendant was on 14.5.2007 much after three years from the date, namely, 5.6.2003 when amount, according to the Defendant, fell due. Consequently, on facts and on evidence, the Defendant had not enforced their claim within the statutory period fixed by the law of limitation. Consequently, I hold that the Defendant is not entitled for encashment of the bank guarantee and since they had encashed the bank guarantee, the Plaintiff is entitled for recovery of Rs.87,79,269.60/-. In fact, this view has also been strengthened by the order in WP.No.20253 of 2007 as stated above. This being a finding of fact, binds this court since this court cannot go behind the earlier finding as a court of record. This court being a court of record, under Article 215 of the Constitution of India, the decision rendered by the learned Single Judge of this Court is equally binding on this court. Law of precedent is clear on this aspect.

27. In **AIR 1965 SC 1153 (Gulabchand Chhotalal Parikh Vs. State of Gujarat)**, a constitutional Bench of the Honourable Supreme Court has held in paragraphs 60 and 61 as follows:-

“60. As a result of the above discussion, we are of opinion that the provisions of s. 11 C.P.C. are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter. The nature of the former proceeding is immaterial.

61. We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under arts. 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We therefore hold that on the general principle of res judicata, the decision of the High Court on a writ petition under Art. 226 on the merits on a matter after contest will operate as res judicata in a subsequent regular suit between the same parties with respect to the same matter.”

Consequently, with respect to issue (2), I hold that the Plaintiff has made out a case for a sum of Rs.87,79,269.60/- and accordingly, issue (2) is answered.

28. **Issue (3):-** This issue arises with respect to the claim of the Defendant for the period 1.4.2006 to 31.3.2007, which is based on the agreement in Ex.P23 dated 30.10.2006. In the said agreement, in clause (2)(a), it had been stipulated that the Plaintiff should export a quantity of not less than 7,20,000 MTs with valid export licence from the Government of India during the allotment period. The allotment period was fixed as 1.4.2006 to 31.3.2007. The wharfage charges and cleaning charges were also fixed by both the parties. It was also provided as follows:-

“In case of any shortfall in the guaranteed throughput of 7,20,000 metric tonnes during the allotment period through the above plots, the Licensee shall make the good the same to Licensor by paying an amount of Rs.111/- per metric ton (wharfage charges Rs.85/-, cleaning charges Rs.2/-, Pollution Levy Rs.5/- and Marine charges Rs.19/- per metric ton) or Ports Scale of Rates as amended from time to time including the statement of terms and conditions thereof for exporting iron ore through Bharathi Doc for such shortfall.”

It was further provided under clause 2(b) as follows:-

“The licensee is permitted to utilize the plot either solely or jointly with another exporter or alternatively with co-exporters by

jointly utilizing others plots or by availing cargo as loan from exporters who is allotted with plots at Bharathi Dock to maximize the utilization of plots more effectively subject to the condition that the Licensor is not responsible for any shortfall in the minimum guaranteed throughput in case of failure in coordinating with other Exporters or for any other reasons whatsoever. It is the responsibility of the Licensee to honour the export commitment of minimum guaranteed throughput agreed upon by them.”

29. Under the terms of the agreement in Ex.P3, the Plaintiff had also furnished bank guarantee No.66/2006 dated 14.8.2006 in Ex.P24 for Rs.3,43,99,200/-. The Plaintiff had also furnished another bank guarantee No.39/2006 dated 12.4.2006 in Ex.P25 for Rs.4,23,93,600/- and a third bank guarantee no.70/2006 dated 15.9.2006 in Ex.P26 for Rs.31,27,200/-. On the basis of this agreement, the Defendant had raised demands dated 10.4.2007 in Ex.P27 that a sum of Rs.67,59,678/- towards alleged shortfall. The Plaintiff by letter dated 16.4.2007 in Ex.P28 had denied their liability.

30. Under Ex.P38 dated 23.12.2016, the Plaintiff had written a letter to the Defendant, seeking permission to export iron ore by M/s.Zeenath Transport Company, using the plot allotted to the Plaintiff. The Defendant had granted permission by Ex.P39 dated 29.12.2006 to undertake joint shipments with the M/s.Zeenath Transport Company. However, the Defendant had contended that the exports made jointly by the Plaintiff with M/s.Zeenath Transport Company will not be considered for the purpose of minimum guaranteed throughput. This was in violation of clause 2(b) of the agreement as extracted above. It is the contention of the learned counsel for the Defendant that there can be a joint shipment with a party who had been allotted a plot in Bharathi Dock. I hold that the said condition is onerous. The primary object of

the Defendant is to encourage export of iron ore. Similarly the Plaintiff is also in the business of export of iron ore. During export of iron ore which provides huge revenue to the Government thereby enriching the economy as a whole, it will be very narrow on the part of the Defendant if they were to simultaneously encourage export fixing a minimum guaranteed throughput to be exported and at the same time place restrictions on such export. This clause conveys no meaning at all. On the one hand, the Defendant had encouraged the Plaintiff by allotting plots and had also invited them to export iron ore. They in fact fixed a minimum guaranteed throughput of 7,20,000 MTs. The Plaintiff in order to achieve the said minimum guaranteed throughput had sought permission to have joint export with another construction called M/s.Zeenath Transport Company. After granting permission, it is highly unwarranted on the part of the Defendant to later claim that they were not recognized export since M/s.Zeenath Transport Company had not been allotted a plot at Bharathi Dock.

31. It is to be seen that the primary aim of the Defendant is to, as stated above, encourage export. Export should be within the legal parameters and should not be a illegal activity. It should not be an act prohibited by law of the land. There could not be any concealment either in the quantity exported or in the payments made towards the export. Inasmuch as the plaintiff completely discloses the quantity exported, the Defendant should not restrict the same and after permitting export, recover charges. I hold that the act of the Defendant is wholly uncalled for and consequently the encashment of the bank guarantee by the Defendant by Ex.P29 letter dated 15.4.2007 to a total sum of Rs.1,55,38,947.60/ which also included the claim of Rs.67,59,678/- under this

issue is wholly illegal and unwarranted. Accordingly, this issue (3) is answered in favour of the Plaintiff.

32. **Issue (4):-** This issue arises out of the interpretation of clause 5(j) and 5(k) of the agreement dated 30.8.2005 marked as Ex.P41 for the period 1.7.2005 to 31.3.2006. According to the Plaintiff, a joint survey was conducted as stipulated under Ex.P41. In Ex.P41, clauses 5(j) and 5(k) provide as follows:-

“5(j). The Licensee shall make his own arrangement for accounting his cargo by coordinating with the Licensor's representative i.e. Superintending Engineer (Ore Handling) on daily basis.

5(k). The Licensee shall arrange to carry out survey of the quantities loaded into the ship through approved surveyors and furnish two copies of the same to the Office of the Superintending Engineer (OH).”

33. In this case, the Defendant had not disputed the report of the surveyor. It was the claim of the Defendant that for the period 1.7.2005 to 31.3.2006, there was a shortfall of 77015 MTs and the Plaintiff was called upon to pay a sum of Rs.45,34,643/- towards the shortfall. The Plaintiff in its letter dated 14.6.2006 marked as Ex.P19 had pointed out that the Defendant did not take into account the shipments made over and above the plot capacity of 60,000 MTs and loan cargo. In this connection, the Defendant had also produced their original agreement of allotment and also the memos of calculation for the period up to 31.3.2006 for plot No.E5 as Ex.D6, for plot C2 as Ex.D7, for plot no.C2 as Ex.D8, for plot W1 (north) as Ex.D9, for plot E4 as Ex.D10 and for plot C3 (north) as Ex.D11.

34. It is the contention of the learned counsel for the Defendant that utilization is different from loan cargo. It is the contention of the Defendant that

the loan cargo cannot be taken into account. Moreover, under Ex.P41 in clause 2, the export should be exclusively through the above port. Consequently, in Ex.P19, on 14.11.2005 and again on 24.2.2006, export made by M/s.Zeenath Transport Company has to be deducted. This shortfall has been worked out through the memos of calculation pointed out above in Ex.D6 to D11. I hold that the claim under this category for the period 1.7.2005 to 31.3.2006 cannot be permitted and consequently, the claim of the Plaintiff for a sum of Rs.45,34,643/- is negatived. It is also seen that the Plaintiff has actually paid the said amount to the Defendant. Even though they had paid under protest, they now seek recovery of the same which this court negatives. Accordingly, issue (4) is answered.

35. **Issue (5):-** It is, therefore, seen that the Plaintiff is entitled for a decree for recovery of a sum of Rs.87,79,269.60/- and Rs.67,59,678/-, in all totalling Rs.1,55,38,947.60/- alone together with interest. The Plaintiff is not entitled for recovery of a sum of Rs.45,34,643/-. Since the Defendant is a State, I hold that the Plaintiff is entitled for interest at the rate of 6% p.a. only.

36. In the result, this civil suit is partly decreed for a sum of Rs.1,55,38,947.60/- (Rupees one crore fifty five lakhs thirty eight thousand nine hundred and forty seven and paise sixty only) with interest 6% p.a. from the date of the plaint till the date of realisation. No costs.

22.03.2017

Index:Yes/No  
Web:Yes/No  
Speaking/Non Speaking  
Srcm

C.V.KARTHIKEYAN, J.

Srcm

To:

1. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in  
CS.No.60 of 2010

22.03.2017

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